110-15

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 1068.

HENRY W. HOLLAND, APPELLANT,

vs.

LAURA A. CHALLEN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

FILED OCTOBER 8, 1883.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 1068.

HENRY W. HOLLAND, APPELLANT,

vs.

LAURA A. CHALLEN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

INDEX.

	Original.	Print.
Amended bill	1	1
Demurrer to amended bill	7	4
Decree	9	5
Appeal allowed	9	5
Citation	10	6
Certificate of clerk	11	6

1 Pleas before the honorable Geo. W. McCrary, judge of the circuit court of the United States for the eighth judicial circuit and district of Nebraska, and Elmer S. Dundy, judge of the district court of the United States for the district of Nebraska, sitting in said circuit court, at the term of May, 1883.

Be it remembered that on the 7th day of March, 1883, with leave of court first obtained, an amended bill was filed in the office of the clerk of said circuit court, which said amended bill is in the words and figures following, to-wit:

Amended bill in equity.

In the United States circuit court for the district of Nebraska.

HENRY W. HOLLAND, COMPLAINANT,
vs.
LAURA A. CHALLEN, DEFENDANT. } No. 119. G.

To the honorable the judges of the circuit court of the United States for the district of Nebraska:

Henry W. Holland, a citizen of the city of Cambridge, in the State of Massachusetts, brings this his amended bill of complaint against Laura A. Challen, a citizen of the city of Cincinnati, in the State of Ohio.

And thereupon your orator complains and says that your orator at the commencement of this suit was, and still is, the owner in fee-simple and entitled to the possession of the following described real estate, situated in the county of Johnson, in the State of Nebraska, to wit: The West half of Section 23, in Township 4 North, of Range 9 East, and the Southwest quarter of Section 10, and the Northwest quarter of Section 12, both in Township 4 North, of Range 10 East, and the North half of Sec-
2 tion 3, in Township 5 North, of Range 10 East, all of which said real estate was, at the commencement of this action, of the value of $6,000 and more, and is now of the value of more than $8,000; that your orator's title, interest, claim, ownership, and estate in and right of possession of said real estate arise out of and exist by reason of the following facts and circumstances, and are derived from and based upon the deeds and muniments of title hereinafter set forth and described, to wit:

On May 19th, 1876, the State of Nebraska, by J. W. Buffum, who was then treasurer of the said Johnson County, Nebraska, made, executed, and delivered to one Hamilton H. Gray, three tax deeds, one of which conveyed to said Gray the said West half of Section 23, another of which conveyed to said Gray said Southwest quarter of Section 10, and the said Northwest quarter of Section 12, and the third of which conveyed to said Gray the said North half of Section 3, of the above-described real estate. Each of said deeds was made in the exact form prescribed by the statutes of the State of Nebraska, then covering tax deeds, and said deeds were signed under his hand and seal by the said Treasurer Buffum, and were subscribed by two witnesses and were attested by the signature of one J. S. Dew, who was then county clerk of said county, and who attached to

each of said deeds the seal of said county, which seal was in the form following, to wit:



Said seal had long prior to that time been adopted by the board of county commissioners of said Johnson County, which board had
3 selected the emblems and devices thereon indicated, as above set forth, and said board had procured said seal to be made and used as the seal of said county by the county clerk thereof, and said seal had been so used for many years prior to that time, and was then and ever since has been and is now used as the only and exclusive seal of said county of Johnson, in the State of Nebraska. Said deeds were each of them acknowledged by the said treasurer before one D. P. Henry, county judge of Johnson County, Nebraska, whose seal was attached to said acknowledgments, and said deeds were on the 19th day of May, 1876, at 2 o'clock p. m. filed for record, and were duly recorded in book "I," at pages 537, 539, and 541 of the deed records of said county.

At the time said deeds were executed and delivered said real estate was and always had been wholly unoccupied, wild, and uncultivated.

On December 27th, 1876, the State of Nebraska, by said treasurer, J. W. Buffum, made, executed, and delivered to said Hamilton H. Gray a tax-deed, which conveyed to said Gray the said West half of Section 23, in Township 4 North, of Range 9 East, of the above-described real estate, and on December 30th, 1876, the said treasurer made, executed, and delivered to said Gray three other tax-deeds, one of which conveyed the said Southwest Quarter of section 10, another of which conveyed the said Northwest quarter of Section 12, and the third of which conveyed the said North half of Section 3 of the first above-described real estate. All of said deeds were made in the exact form prescribed by the statute of Nebraska covering tax-deeds. Said deeds were signed by said Treasurer Buffum under his hand and seal, and were subscribed to by two witnesses, and were attested by the signature of said County Clerk Dew, who attached to said deeds the above-described seal of the county of Johnson. Said deeds were acknowledged by said treasurer before one B. F. Perkins, a notary public, duly commissioned and qualified in and for said county, who
4 attached his notarial seal to said acknowledgements, and said deeds were filed for record, the first thereof on the 27th day of December, 1876, and the other three thereof on the 3d day of January, 1877, and were recorded in book "K," at pages 32, 42, 46, and 68 of the deed records of said Johnson County, Nebraska. At the time of the execution of said deeds all of said real estate was still unoccupied, wild, and uncultivated.

On October 25th, 1878, said Hamilton H. Gray and his wife, by deed of quitclaim and release conveyed all of said real estate to your orator, which last deed was duly recorded in the deed records of said Johnson County, Nebraska, in book "M," at page 49.

Your orator and his grantor have paid several hundred dollars of taxes on said real estate from and including the year 1872 to the present time, since which year 1872 neither the said defendant nor any other person for her has ever paid any taxes on said real estate.

More than three years elapsed subsequent to the recording of all the above-described tax-deeds to the commencement of this suit, and in no part of said time was the defendant or any person claiming by, through, or under her in the possession or occupancy of the said real estate, or any part thereof, and no action has ever been commenced by said defendant, or any other person to recover possession of said real estate, or any part thereof, nor has any action of any kind involving the title to said real estate ever been commenced except this suit.

Your orator further showeth that prior to the acquirements by your orator of his said above title to all of the said real estate the said defendant claimed to be the owner in fee-simple of the said real estate.

5 At the time of the commencement of this suit the said defendant did and ever since has claimed some lien, interest, title to, and estate in all of said real estate, adverse to the interest, title, and estate of your orator, which claim of said defendant so affects your orator's title to said real estate as to render the sale or other disposition thereof impossible, and hinders and disturbs your orator in his title to and right of possession of the same. Your orator is wholly ignorant of the nature of said claim of the said defendant, and what said claim consists, except so far as said defendant disputes the validity of your orator's title to said real estate and claims to be the owner thereof or otherwise interested therein as above set forth.

And your orator well hoped that no disputes would have arisen touching the title to and right of possession of said real estate, but that said defendant would have complied with the reasonable demands of your orator and abandoned her claim to said real estate, and would have allowed your orator quietly and peaceably to have possession thereof, but now, so it is, may it please your honors, that said defendant is contriving now to wrong and injure your orator in the premises by claiming to be the owner of said real estate, and by trying to obtain, take, and keep possession thereof, and by denying and slandering your orator's title to and his right of possession thereof, all of which acts, doings, and pretenses of said defendant are contrary to equity and good conscience, and tend to the manifest wrong, injury, and oppression of your orator in the premises.

Wherefore, your orator submits forasmuch as he is without remedy save in this court where matters of this and of like nature are cognizable and relieveable that his title to said real estate should be quieted by a decree of this court as against said defendant, and all persons claiming by, through, and under her, and be adjudged to be perfect and valid as against said defendant, and all persons claiming by, through, or under her,

6 and that said defendant, and all persons claiming by, through, or under her be forever enjoined and forbidden from in any manner injuring or hindering your orator in his title to or right of possession thereof.

To the end therefore that said defendant may, if she can, show why your orator should not have the relief hereby prayed, and that she may show the nature of the adverse estate, interest, or claim which she sets up and asserts to said real estate, and that she may to the best and utmost of her ability, knowledge, information, and belief, upon her corporal oath, full, true, and direct and perfect answer make to all and singular the matters hereinbefore stated and charged, as fully and particularly as if the same were hereinafter repeated and she thereunto distinctly interrogated, and that it be by decree of your honors declared that your orator's title to said real estate is perfect and valid as against the said defendant herein and all persons claiming by, through, or under her, and that your orator's title to said real estate may be forever quieted in him by your honors' said decree, and your orator's right of possession be thereby assured, and that said defendant may be decreed to have no estate, right, title, or interest in or to said real estate, or any part thereof, and that she may be enjoined from in any manner injuring or hindering your orator in his title to and possession of said real estate, and that said defendant may be required to pay the costs of this suit, and that your orator may have decreed to him by your honors all such other and further relief as the circumstances of the case may require and as is agreeable to equity;

May it please your hónors to grant unto your orator the most
7 gracious writ of subpœna, issuing out of and under the seal of this honorable court, to be directed to Laura A. Challen, the said defendant, therein and thereby commanding her on a certain day and under a certain penalty to be therein inserted, that she personally be and appear before your honors in this honorable court, then and there to answer the premises and stand to, abide by, and perform such order and decree therein as to this court shall seem proper, and as shall be agreeable to equity and good conscience.

And your orator will ever pray.

M. MONTGOMERY AND
GROFF & MONTGOMERY,
Solicitors for Complainant and of Counsel.

Upon the back of said amended bill appear endorsements in words and figures following, to wit: No. 119. G. United States circuit court, district of Nebraska. Henry W. Holland vs. Laura A. Challen. Amended bill. Filed Mar. 7, 1883. Elmer D. Frank, clerk. M. Montgomery and Groff and Montgomery, solicitors for complainant.

Thereupon, afterwards, to wit, on the 10th day of May, 1883, a demurrer was filed in said case, which said demurrer is in the words and figures following, to wit:

Demurrer to amended bill.

In the circuit court of the United States for the district of Nebraska.

HENRY W. HOLLAND
vs.
LAURA A. CHALLEN.

The demurrer of defendant, Laura A. Challen, to the amended bill of complaint of plaintiff, Henry W. Holland.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said plaintiff's amended bill to be true in such manner and form as the same are therein set forth or alleged, does demur thereto, and for cause of demurrer shows that the said plaint-
8 iff has not, in and by his said amended bill, made or stated such a case as doth or ought to entitle him to any such discovery or relief as is hereby sought or prayed for from or against this defendant; wherefore this defendant demands the judgment of this honorable court whether she shall be compelled to make any further or other answer to the said amended bill, or any of the matters and things therein contained, and prays to be hence dismissed with her reasonable costs in this behalf sustained.

GEO. W. DOANE,
Solicitor for Def't.

I, Geo. W. Doane, a counselor of said court, do hereby certify that, in my opinion, the above demurrer is well founded in point of law.

GEO. W. DOANE,
Counselor at Law.

Dated May 10th, 1883.

The affidavit in support of the above demurrer by the defendant is hereby waived and we hereby consent that the demurrer be filed instanter.

GROFF AND MONTGOMERY,
Solicitors for Complainant.

Upon the back of said demurrer appear endorsements in words and figures following, to wit:

No. 119, docket G. United States circuit court, district of Nebraska. Henry W. Holland vs. Laura A. Challen. Demurrer. Filed May 10, 1883. Elmer D. Frank, clerk. Geo. W. Doane, att'y.

9 Thereupon, afterwards, at the May term of said court, on the 19th day of May, 1883, the following proceedings were had as appears of record on folio 622, journal H, of said court, to wit:

Demurrer to amended bill sustained and appeal allowed.

HENRY W. HOLLAND
vs.
LAURA A. CHALLEN. } No. 119. G.

This cause having been argued and submitted to the court by attorneys

for the respective parties on demurrer to the amended bill herein, and the court being fully advised in the premises, and after careful consideration thereof, now, on this day, order, adjudge, and decree that said demurrer be, and the same is hereby, sustained, and suit to stand dismissed at the costs of said complainant, from which decree of the court the complainant prays an appeal to the Supreme Court of the United States, which is allowed.

It is further ordered that the bond for costs be, and the same is, fixed at the sum of two hundred and fifty ($250.00) dollars.

Thereupon, afterwards, to wit, on the 27th day of July, A. D. 1883, a citation was issued in said cause, of which said citation the following is the original:

10 THE UNITED STATES OF AMERICA,
District of Nebraska, ss:

To Laura A. Challen, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to an appeal from a decree of the circuit court of the United States for the district of Nebraska, wherein Henry W. Holland is the appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Omaha, this 27th day of July, 1883.

[SEAL.] ELMER S. DUNDY, *Judge.*

I hereby acknowledge service of the above citation this 28th day of July, A. D. 1883.

GEO. W. DOANE,
Sol'r & Att'y for Def't.

(Indorsed:) No. 119. G. United States circuit court, district of Nebraska. Henry W. Holland vs. Laura A. Challen. Citation. Filed Jul' 31, 1883. Elmer D. Frank, clerk.

11 UNITED STATES OF AMERICA,
District of Nebraska, ss:

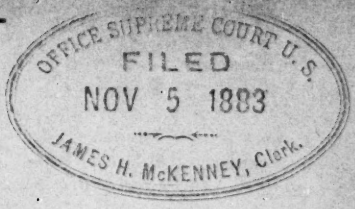
I, Elmer D. Frank, clerk of the circuit court of the United States for the district of Nebraska, in the eighth circuit, do hereby certify that the foregoing folios from one to ten, contain true and faithful transcripts of all pleadings and proceedings of record and on file in my office as said clerk, subsequent to and including the date of the filing of the amended bill, in the case of Henry W. Holland vs. Laura A. Challen.

Witness my hand and the seal of said circuit court, at Omaha, this 18th day of August, A. D. 1883.

[SEAL.] ELMER D. FRANK, *Clerk.*

(Indorsement on cover:) No. 1068. Henry W. Holland, appellant, vs. Laura A. Challen. Nebraska C. C. U. S. Filed 8th October, 1883.

110-15



In the Supreme Court of the United States

OCTOBER TERM 1883.

No. 1068.

HENRY W. HOLLAND, Appellant,

vs.

LAURA A. CHALLEN, Appellee.

BRIEF FOR THE APPELLANT.

LEWIS A. GROFF.
C. S. MONTGOMERY.
Of Counsel for Appellant.

SAMUEL REES, Printer and Blank Book Maker, Omaha, Neb.

for the respective parties on demurrer to the amended bill herein, and the court being fully advised in the premises, and after careful consideration thereof, now, on this day, order, adjudge, and decree that said demurrer be, and the same is hereby, sustained, and suit to stand dismissed at the costs of said complainant, from which decree of the court the complainant prays an appeal to the Supreme Court of the United States, which is allowed.

It is further ordered that the bond for costs be, and the same is, fixed at the sum of two hundred and fifty ($250.00) dollars.

Thereupon, afterwards, to wit, on the 27th day of July, A. D. 1883, a citation was issued in said cause, of which said citation the following is the original:

10 THE UNITED STATES OF AMERICA,
District of Nebraska, ss:

To Laura A. Challen, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to an appeal from a decree of the circuit court of the United States for the district of Nebraska, wherein Henry W. Holland is the appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Omaha, this 27th day of July, 1883.

[SEAL.] ELMER S. DUNDY, *Judge.*

I hereby acknowledge service of the above citation this 28th day of July, A. D. 1883.

GEO. W. DOANE,
Sol'r & Att'y for Def't.

(Indorsed:) No. 119. G. United States circuit court, district of Nebraska. Henry W. Holland vs. Laura A. Challen. Citation. Filed Jul' 31, 1883. Elmer D. Frank, clerk.

11 UNITED STATES OF AMERICA,
District of Nebraska, ss:

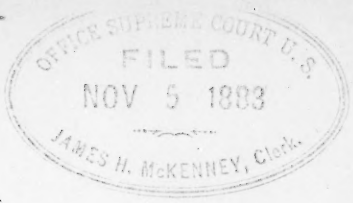
I, Elmer D. Frank, clerk of the circuit court of the United States for the district of Nebraska, in the eighth circuit, do hereby certify that the foregoing folios from one to ten, contain true and faithful transcripts of all pleadings and proceedings of record and on file in my office as said clerk, subsequent to and including the date of the filing of the amended bill, in the case of Henry W. Holland vs. Laura A. Challen.

Witness my hand and the seal of said circuit court, at Omaha, this 18th day of August, A. D. 1883.

[SEAL.] ELMER D. FRANK, *Clerk.*

(Indorsement on cover:) No. 1068. Henry W. Holland, appellant, vs. Laura A. Challen. Nebraska C. C. U. S. Filed 8th October, 1883.

110-15



In the Supreme Court of the United States

OCTOBER TERM 1883.

No. 1068.

HENRY W. HOLLAND, Appellant,

vs.

LAURA A. CHALLEN, Appellee.

BRIEF FOR THE APPELLANT.

LEWIS A. GROFF.
C. S. MONTGOMERY.
Of Counsel for Appellant.

SAMUEL REES, Printer and Blank Book Maker, Omaha, Neb.

In the Supreme Court of the United States.

OCTOBER TERM 1883.

No. 1068.

HENRY W. HOLLAND, Appellant,

vs.

LAURA A. CHALLEN, Appellee.

BRIEF FOR THE APPELLANT.

LEWIS A. GROFF.
C. S. MONTGOMERY.
Of Counsel for Appellant.

This is an appeal from a decree of the Circuit Court of the United States for the District of Nebraska.

A bill in equity was filed by the appellant, Henry W. Holland, against the appellee, Laura A. Challen, pursuant to a statute passed by the Legislature of the State of Nebraska, [comp. st. 1881, p. 394, sec's 57-58-59 and 60,] which statute is hereinafter copied in full, and by the terms of which it is provided what shall constitute a cloud upon real estate in the State of Nebraska.

The record in this court consists of an amended bill, the general demurrer thereto, which was sustained by the court, and

the decree of the court dismissing the bill, the complainant having elected to stand upon his amended bill.

The object of the bill was to obtain a decree of the Court, "determining . . . and quieting the title to" the real estate described therein.

In the bill, the complainant alleges first, in general terms, that he is the owner in fee simple of the real estate. He then sets forth specifically the facts, and describes the deeds from which his title is derived, and finally, he alleges, in statutory terms, that the defendant "claims an adverse estate, or interest" in the real estate, the nature of which estate or interest the complainant is ignorant of, and that the claim of the defendant is a cloud upon the title of the complainant.

There were several questions raised by the counsel for the defendant urging that the bill was insufficient, all of which we think have been substantially decided by this Court, favorably to the appellant.

Indeed, subsequent to the rendition of the decree in this suit, and in a suit brought under the same statute with the same object, at the same term, and heard by Mr. Justice Miller, sitting at the circuit, the learned justice rendered an oral opinion, in which at least two of the points involved in the suit at bar were decided adverse to the decision rendered herein by the circuit and district judges.

The points involved, and to the discussion of which we respectfully invite the attention of this honorable Court, are as follows:

FIRST POINT.

Do the facts alleged in the bill show a good title to the lands in the appellant? We submit that they do.

The title thus alleged is based on tax deeds, made, executed, acknowledged and delivered to one Hamilton H. Gray, the grantor of Henry W. Holland, the appellant. These deeds were witnessed, duly acknowledged, and recorded, in May and December 1876, and more than three years prior to the commencement of the suit. They were all fair, and regular upon their face and strictly followed the statutory form. Such being the case the purchaser, immediately upon the delivery of the deeds became *prima facie* the owner in fee simple of the lands conveyed: the legal title was at once vested in him.

No other conclusion can be reached in view of the statute in force at the time said deeds were issued, which statute prescribes the effect of a tax deed thus issued. The statute is found in the Laws of Nebraska for 1875 at page 94, which reads as follows:

"SEC. 104. The deed shall be signed by the treasurer in his official capacity, and acknowledged by him before some officer authorized to take acknowledgments of deeds; and when substantially thus executed and recorded in the proper record of of titles to real estate, shall vest in the purchaser all the right, title, interest, and estate of the former owner in and to the land conveyed, and also all the right, title, and interest of the state and county thereto [except state lien on school lands], and shall be [prima facie] evidence in all Courts of this state, in all controversies and suits in relation to the rights of the pur-

chaser, his heirs, and assigns, to the land conveyed, of the following facts:

First. That the real property conveyed was subject to taxation for the year or years stated in the deed.

Second. That the taxes were not paid at any time before sale.

Third. That the real property conveyed had not been redeemed from the sale, at the date of the deed.

Fourth. That the property had been listed and assessed at the time and in the manner required by law.

Fifth. That the taxes were levied according to law.

Sixth. That the property was advertised for sale in the manner and for the length of time required by law.

Seventh. That the property was sold for taxes, as stated in the deed.

Eighth. That the grantee named in the deed was the purchaser, or the assignee of the purchaser.

Ninth. That the sale was conducted in the manner required by law.

Tenth. That all the pre-requisites of the law had been complied with, by all the officers who had, or whose duty it was to have had, any part or action in any transaction relating to or affecting the title conveyed, or purporting to be conveyed, by the deed, from the listing and valuation of the property up to the execution of the deed, both inclusive, and that all things whatsoever required by law to make a good and valid sale, and to vest the title in the purchaser were done; and in all

controversies and suits involving the title to real property claimed and held under and by virtue of a deed executed substantially as aforesaid by the treasurer, the person claiming title adverse to the title conveyed by such deed, shall be required to prove in order to defeat the said title, either that the said real property was not subject to taxation for the year or years named in the deed; that the taxes had been paid before the sale; that the property was not subject to taxation at the date of sale; or, that the land had never been assessed for taxation; or, that the same has been redeemed according to the laws of this state, and that such redemption was made for the use and benefit of persons having the right of redemption under the laws of this state; but no person shall be permitted to question the title acquired by a treasurer's deed, without first showing that he or she, or the person under whom he or she claims title, had title to the property at the time of the sale, or that the title was obtained from the United States or this state after the sale; and that all taxes due upon the property have been paid by such person, or the person under whom he or she claims title as aforesaid: *Provided*, that in any case where a person had paid his taxes and, through mistake in the entry made in the treasurer's books, or in the receipt, the land upon which the taxes were paid was afterward sold, the treasurer's deed shall not convey the title: *Provided further*, that in all cases where the owner of lands sold for taxes shall resist the validity of such tax title, such owner may prove fraud committed by the officer selling the same, or in the purchaser to defeat the same, and if fraud is so established

such sale and title shall be void; and in no event shall a decree or judgment be rendered against the purchaser until the claimant shall have paid to said purchaser, his heirs, or assigns, the full value of any and all improvements he has put upon said real estate after the date of the treasurer's deed; that the failure or neglect of the treasurer to seize or to attempt to seize, personal property for real estate tax, shall not in anywise effect or invalidate the deed to any real estate sold under the provisions of this act; *and provided also*, that this act shall not effect any tax deed made prior to the passage of this act.

SEC. 2. This act shall take effect and be in force from and after August 1, 1875."

A tax deed by virtue of this statute, while conveying *prima facie* the legal title, was subject under certain conditions to be defeated by proof of irregularity, or illegality in the proceedings of the officers of the state prior to the issuance of the deed.

But a further statute existed in force at the time of the issuance of said deeds, by virtue of which the *prima facie* title thus acquired became, after three years, "complete and perfect." This statute is found in gen. statutes of Nebraska of 1873 at page 933, sec. 105, and reads as follows:

"SEC. 105. Any person or persons, or county, purchasing any lands or town lots at any public or private sale, for taxes levied on lands sold under the provisions of this act, shall, after a lapse of three years from the time of recording the treasurer's deed therefor, acquire a complete and perfect title thereto, and all other persons claiming title to any such lands

or lots, shall, after the lapse of three years from said date, be debarred from commencing or sustaining any action in any Court of this state, to recover possession of the same, and the Courts of this state are hereby prohibited from entertaining or sustaining any such action."

The effect of this statute was to bar the former owner from setting up or showing defects, in the proceedings prior to the deed, for the purpose of defeating the tax title, which was by the statute made complete and perfect.

In Oconto Company v. Jerrard, 46 Wis., 317, Chief Justice Ryan states the effect of the Wisconsin statute, which was far less direct and certain in its terms than the statute of Nebraska, as follows:

"The respondents had their day to impeach the tax proceedings and avoid the tax deed. Then they might have said that the ground work was so defective that there was no tax, and that the deed was therefore no tax deed. This they did not then do, and they are now too late to do it. They suffered the statute to purge the tax proceedings of all defects, to raise the tax deed above impeachment. Their objections may be all well founded, but they come out of time. What the respondents might have said they cannot now say. The statute has left them like one estopped to speak the truth, because they did not speak it when they might.

"That has been the construction uniformly given by this court to the statute of limitations in relation to tax deeds.

"It has been uniformly held, in a multitude of cases, that, as against the grantee of a tax deed, the statute puts at rest all

objections against the validity of a tax proceeding, whether resting on mere irregularity, or going to the groundwork of the tax. The statute makes a deed, valid on its face, *prima facie* evidence, as soon as executed, of the regularity of all the proceedings, from the assessment of the land inclusive to the execution of the deed; and the effect of all the decisions is that when the statute has run in favor of the grantee, the deed becomes conclusive to the same extent.

"The terms of the statute bar any action to recover the possession of land sold and conveyed by deed for non-payment of taxes; and the learned counsel of the respondent contends that, to bring the tax deed within the statute, the validity of the tax and of the sale must be established. Such a construction would go far to make this statute a dead-letter. The statute was designed to protect things *de facto*, and not things *de jure*. Where there has been an actual attempt, however defective in detail, to carry out proper exercise of the taxing power, the statute applies; and the trouble with the argument is that, in such a case, saving the instances excepted by the statute itself, after the statute has run, the tax deed itself conclusively establishes the validity of the tax and of the sale."

The Wisconsin statute thus referred to reads as follows: "No action shall be commenced by the former owner or owners of any lands, or by any person claiming under him or them, to recover possession of land which has been sold and conveyed by deed for non-payment of taxes, or to avoid such

deed, unless such action shall be commenced within three years next after the recording of such deed." (Gen. Laws of 1861, Chapter 138, Sec. 5.)

The same doctrine has been announced in the following Wisconsin cases:

Sprecker v. Wakeley, 11 Wis., 432–442.
Milledge v. Coleman, 47 Wis., 185.

And in those hereinafter cited.

And the courts of Pennsylvania, Kansas, Iowa, California, Minnesota and Michigan have adhered to the same principles in the following cases:

Steward v. Trevor, 56 Penn. St., 385.
Johnson v. Jackson, 70 Penn. St., 164.
Taylor v. Mills, 5 Kansas, 498.
Bowman v. Cockrell, 6 Kansas, 311.
Maxson v. Huston, 22 Kansas, 643.
Brown v. Painter, 32 Iowa, 456.
Byington v. Stone et al., 51 Iowa, 317.
Shawler v. Johnson, 52 Iowa, 472.
Wright v. Lacey, 52 Iowa, 249.
Arrington v. Lescom, 34 Cal., 365.
Bower v. O'Donnell (Minn.), 12 N. W. Rep., 352.
Toll v. Wright, 37 Mich., 95.

And in those hereinafter cited.

The following are substantially the statutes upon which the above and following decisions are based:

PENNSYLVANIA.

"No action for possession of said land shall lie, unless the same be brought within five years after the sale thereof, for taxes, as aforesaid."

KANSAS.

"Any suit or proceeding against the tax purchaser, his heirs or assigns, for the recovery of lands sold for taxes, or to defeat or avoid a sale or conveyance of lands sold for taxes, except in cases where the taxes have been paid, or the land redeemed as provided by law, shall be commenced within two years from the time of recording the tax deed of sale, and not thereafter."

IOWA.

"No action for the recovery of real property, sold for the non-payment of taxes, shall lie, unless the same be brought within five years after the treasurer's deed is executed and recorded as above provided."

MINNESOTA.

"No tax sale shall be set aside or held invalid unless the party objecting to the same shall bring his action to set aside, or to test the validity of such sale within five years from the date of the sale." (Laws of 1875, Chap. 5, Sec. 30.)

This doctrine has also been announced in several cases by this court.

Pillow v. Roberts, 13 Howard, 472.

Barrett v. Holms, 102 U. S., 655.

Geekie v. Kirby Carpenter Co., 106 U. S., 379.

In the latter case, speaking for the whole court, Mr. Justice Blatchford, in clear and comprehensive language, states the necessary effect of the statute, thus:

"The statute applies whenever there has been an actual attempt, however defective in detail, to carry out a proper exercise of the taxing power. As against the grantee in the tax deed the statute puts at rest all objections raised, after the time specified, against the validity of the tax proceeding, from and including the assessment of the land to and including the execution of the deed. If the deed is valid on its face, and purports to convey the land on a sale for the non-payment of taxes, it is, during the three years, *prima facie* evidence of the regularity of the tax proceeding, and, after the statute has run in favor of the grantee, the deed becomes conclusive to the same extent."

The Nebraska statute above quoted makes the title "complete and perfect" without the necessity of a possession, but, waiving the question of its effect where the former owner is in actual possession of the land, it appears in the case at bar that neither party was in actual possession, the land being unoccupied.

In such cases the constructive possession follows the legal title, which was vested in Holland; and the former owner must take actual possession of the land, or commence his action within three years, to prevent the effect of the statute. If he fails so to do, the grantee in the tax deeds acquires a "complete and perfect title."

The following authorities support this proposition:

Barrett v. Holms, 102 U. S., 655.
Robb v. Brown, 9 Penn. St., 71.
Shirk v. McElroy, 20 Penn. St., 25.
Board v. Patterson, 22 Id., 219.
Rodgers v. Johnson, 67 Id., 48.
Knox v. Cleveland, 13 Wis., 246.
Dean v. Early, 15 Wis., 100.
Whitney v. Marshall, 17 Id., 174–180.
Gunnison v. Hoehne, 18 Id., 268.
Lawrence v. Kenney, 32 Id., 281.
Moingona Coal Co v. Blair, 51 Iowa, 417.
Goslee v. Tierney, 52 Iowa, 455.
Monk v. Carbin, 12 N. W. Rep., 571.

SECOND POINT.

Under and by virtue of the foregoing principles, there would seem to be no doubt that Mr. Holland could successfully defend an ejectment suit, or other action brought to defeat his possession or title, and he would be able to thus defend, because his title is "complete and perfect;" but his right to call to his aid the statute of limitations, as complainant, seems to be questioned. We submit, however, that it is well established by reason and authority that one who, by reason of an act of limitation, can claim title while in the position of a defendant, can also make the same claim successfully as complainant against an adverse claimant.

Toll v. Wright, 37 Mich., 95.
Arrington v. Lescom, 34 Cal., 365.
Shawler v. Johnson, 52 Iowa, 472.

THIRD POINT.

The statute which authorized this suit—Comp. Statutes of Neb., 1881, p. 394, Sections 57 to 60, both inclusive—reads as follows:

"SEC. 57. [*Action to Quiet Title.*] That an action may be brought and prosecuted to final decree, judgment, or order, by any person or persons, whether in actual possession or not, claiming title to real estate, against any person or persons who claim an adverse estate or interest therein, for the purpose of determining such estate or interest, and quieting the title to said real estate."

"SEC. 58. [*Pleadings—Procedure.*] All such pleadings and proofs and subsequent proceedings shall be had in such action now pending or hereafter brought, as may be necessary to fully settle and determine the question of title between the parties to said real estate, and to decree the title to the same, or any part thereof, to the party entitled thereto; and the court may issue the appropriate order to carry such decree, judgment, or order into effect."

"SEC. 59. [*Reversioners.*] Any person or persons having an interest in remainders or reversion in real estate, shall be entitled to all the rights and benefits of this act."

"SEC. 60. [*Costs.*] If the defendant or any one of several defendants, shall appear and disclaim all title and interest adverse to the plaintiff, such defendant shall recover his costs. In other cases the costs shall abide the final decree, judgment, or order in the action."

First.

It was claimed that Holland, as the holder of a tax title, was not included within the terms of this statute, but there would seem to be little question here. The language of the statute is universal. It says "any person or persons, whether in actual possession or not," may maintain an action.

Second.

It was further argued that Holland could not maintain the action because no cloud is shown to exist against his title to the land. Here again the language is universal; any "claim" of "an adverse estate or interest" is made a cloud. Under statutes of this character the fact of an adverse claim is sufficient; the nature of the claim is immaterial.

In the case of *Stark v. Starrs*, 6 Wallace, at page 410, Mr. Justice Field, for the whole court, states the rule as follows:

"By the statute in question it is unnecessary in order to obtain this interposition of equity for the party in possession to delay his suit until his possession has been disturbed by legal proceedings and judgment in those proceedings has passed in his favor. It is sufficient that a party out of possession claims an estate or interest in the property adverse to him. He can then at once commence his suit, and require the nature and character of such adverse estate or interest to be set forth and subjected to judicial investigation and determination, and that the right of possession as between him and the claimant shall be forever quieted."

This action was based on a statute of Oregon differing only from the above Nebraska statute in requiring the plaintiff to

have actual possession of the land. It will be observed that the Nebraska statute allows the claimant to bring the action "whether in actual possession or not," so that, in the case at bar under the Nebraska statute, the constructive possession of the complainant was sufficient to authorize the suit, and bring the case within the rule of the authority above quoted, and of the further authorities following:

Harral v. Gray, 10 Neb., 188.
Joyce v. McAvoy, 31 Cal., 274.
Rucker v. Dooley, 49 Ill., 378.
Shawler v. Johnson, 52 Iowa, 472.
Bogert v. City of Elizabeth, 27 N. J. Eq., 568.
Rhea v. Dick, 34 Ohio St., 422.
Maxson v. Huston, 22 Kansas, 643.
Wing v. Sherrer, 77 Ill., 200.
Belcher v. Mhoon, 47 Miss., 613.
Scorpion S. M. Co. v. Marsano, 10 Nevada, 370.
Meighen v. Strong, 6 Minn., 177.

Also of the other decisions of this court cited hereinafter under head of Fourth Point.

Third.

It was again argued that the statute could not constitutionally apply to any case where the complainant was not in actual possession of the land. The constitutional provision referred to is Sec. 5, Art. I., Constitution of 1866, providing "the right of trial by jury shall remain inviolate," and it was urged that Holland had a remedy at law.

We submit that he had no such remedy, and his case is

within those contemplated by the act of congress conferring equity jurisdiction upon the United States courts. (Rev. St. U. S., Sec. 723). That jurisdiction extends to all cases where a complainant has no "*plain, adequate* and *complete*" remedy at law.

Such remedy, if any existed, could only be by way of an action of ejectment, which action cannot be maintained except against a defendant in possession, either actual or constructive.

Challen had no possession of the lands involved herein of any kind. See

Garner v. Marshall, 9 Cal., 268.
Dutton v. Warschauer, 21 Cal., 609.
Owen v. Fowler, 24 Cal., 194.
Hawkins v. Reichert, 28 Cal., 534.
Kribbs v. Downing, 25 Pa. St., 399.
Conley v. Pentz, 76 Pa. St., 57.

Again, the language and requirements of the statutes of Nebraska, exclude the idea that Holland could have sued in ejectment.

The plaintiff, in his petition, must allege that the defendant "unlawfully keeps him [the plaintiff] out of the possession" of the real estate in controversy.

Comp. St., 1881, p. 614, Sec. 626, which reads as follows:

"SEC. 626. [*Recovery—Petition—Allegations.*] In an action for the recovery of real property, it shall be sufficient, if the plaintiff state in his petition that he has a legal estate therein,

and is entitled to the possession thereof, describing the same, as required by Section 133, and that the defendant unlawfully keeps him out of the possession. It shall not be necessary to state how the plaintiff's estate or ownership is derived."

And the plaintiff must verify his petition.

Comp. St., 1881, p. 545, Sec. 113, which reads as follows:

"SEC. 113. [*Verification.*] Every pleading of fact must be verified by the affidavit of the party, his agent or attorney."

We cannot understand how Holland, being in the constructive possession of the lands and being able at any moment to make his possession actual, could truthfully allege and swear that the defendant "unlawfully kept him out of the possession" of the lands.

But, if by any possible construction of the statute, he could have properly made the allegations required, he would by so doing have stultified himself for an allegation of possession in the former owner of the unoccupied land would have been an admission of the latter's possession during the whole period of limitation the conditions never having been changed; a state of facts inconsistent with a claim of his own possession, which—either actual or constructive—was a necessary element of his title.

From this view the suggested remedy (?) of ejectment would have been self-destructive.

Reason and authority justify our conclusion that Holland had no "plain, adequate and complete" remedy at law, and that the statute, above referred to and quoted, authorized this

suit, and that, in being so construed, there is no violation of the above quoted constitutional provision.

FOURTH POINT.

It was finally and earnestly argued that the United States Courts in equity will not follow nor be governed by a law of the state, extending equitable remedies as regards titles to real estate.

It seems to us, however, that this Court has often settled this question adverse to the position of the counsel for the appellee as above stated.

Referring to a similar statute in Kentucky in *Clark et al. v Smith*, 13 Peters 203, Mr. Justice Catron, speaking for the whole Court, says:

"Kentucky has the undoubted power to regulate and protect individual rights to her soil, and to declare what shall form a cloud on titles; and having so declared, the Courts of the United States, by removing such clouds, are only applying an old practice to a new equity created by the Legislature," and again: "The state Legislatures certainly have no authority to prescribe the forms and modes of proceeding in the Courts of the United States, but having created a right, and at the same time prescribed a remedy to enforce it, if the remedy prescribed is substantially consistent with the ordinary modes of proceeding on the chancery side of the Federal Courts, no reason exists why it should not be pursued in the same form as it is in the State Courts; on the contrary, propriety and convenience

suggest that the practice should not materially differ, where titles to lands are the subjects of investigation, and such is the constant course of the Federal Courts."

The Court speaks to the same effect in *Wickliff v. Owings*, 17 Howard, 47, and also in the above cited Oregon case of *Stark v. Starrs*, 6 Wall., 409. To the same effect are *Starr v. Stark*, 1 Sawyer, 270, *Parish v. Ferris*, 2 Black, 607.

The only difference between the statutes above referred to and that of Nebraska, as above suggested is, that in the former actual possession was required to be in the complainant, while in the latter the complainant is given the right and remedy "whether in actual possession or not," thus including the case at bar.

The chancery power of the United States Courts has always been liberally extended, and such was the undoubted intention of Congress in its establishment, and there can be no impropriety in using that power in the enforcement of a new right, granted by a state law, in the manner designated by such law, when by so doing, as appears in this case, the ordinary forms and procedure on the chancery side of the Court are not violated.

LEWIS A. GROFF,
C. S. MONTGOMERY,
Of Counsel for Appellant.

FILED
DEC 12 1890
JAMES H. McKENNEY, Clerk

110-15

In the Supreme Court of the United States

OCTOBER TERM, 1883.

No. 1068.

HENRY W. HOLLAND, Appellant.

vs.

LAURA A. CHALLEN, Appellee.

BRIEF FOR APPELLEE.

T. M. MARQUETT,
GEO. W. DOANE,
Counsel for Appellee.

SAMUEL REES, Printer and Blank Book Maker, Omaha, Neb.

In the Supreme Court of the United States.

OCTOBER TERM 1883.

No. 1068.

HENRY W. HOLLAND, Appellant,

vs.

LAURA A. CHALLEN, Appellee.

BRIEF FOR APPELLEE.

T. M. MARQUETT,
GEO. W. DOANE,
Counsel for Appellee.

I.

This bill is exhibited by the holder of the tax titles to have the same established as against the true owner, who claimed the fee simple title, before the complainant acquired any interest in the property described in the bill, and who still claims it. The title so held by complainant, and the only title which he holds, as shown by the averments of his bill, is at best a very doubtful title, and the principle applied by courts of equity is,

that where a complainant has himself a doubtful title, he cannot have the relief sought in a bill *quia timet.*

West v. Schuebley, 54 Ill., 523.
Huntington v. Allen, 44 Miss., 654.
Low v. Staples, 2 Nev., 209.

The title of Complainant is not only doubtful, but is absolutely void, as is clearly apparent from the allegations contained in the Original Bill, which we discover has been for some reason omitted from the printed transcript of the record. That gave not only the dates of the tax deeds as given in the Amended Bill, but also the dates of the tax sales, and the years for the delinquent taxes of which the sales were made, from which it appeared that the first sale was made March 31st, 1874, for taxes of 1872; the taxes of 1873 remaining unpaid, and that on Sept. 7th, 1874, the second sale of the same property was made for the taxes of 1873, and upon these two sales, the deeds made to the complainant dated May 19th, 1876, and Dec. 17th, 1876, were based. The Supreme Court of Nebraska has decided that under our laws, the County Treasurer has no authority to sell except for all the taxes due on each parcel of land—that "the object of a sale is to collect the amount of taxes due upon the land—not a portion of such amount," and that "a tax deed based upon a sale for a portion only of the taxes due upon land being unauthorized, is ineffectual to convey title."

State v. Helmer, 10 Neb., 25.
Tillotson v. Small, 13 Neb., 202.
O'Donohue v. Hendrix, 12 Neb., 257.

That these sales are within the principle of the decisions cited, sufficiently appears from the dates given in the Amended Bill. After sale for taxes, two years are given within which to redeem, and then the purchaser is entitled to a deed. The deeds upon which complainant's title rests, were all issued in the same year, 1876, thus indicating by strong inference at least, that the sales had been made in 1874. If at the first sale, the property had been sold for all the taxes then due, as the law required, no second sale could have been made the same year of the same property, for under the revenue law then in force, taxes were levied on the first Monday in July (Gen'l Statutes of Neb., p. 909, sec. 32), payable on and after the first Monday in January following (p. 910, sec. 35) became delinquent on the first day of May thereafter (p. 916, sec. 49), and subject to sale for taxes on the first Monday of September following (p. 918, sec. 55). No sale can take place until the year succeeding the levy of the taxes, nor can a sale take place in any year, except at a time after the taxes of that year have become due and payable, which is the first Monday of January. This being so, the allegations of the Amended Bill without aid from the Original Bill, are sufficient to at least raise a strong presumption against complainants' title.

II.

The bill states no facts constituting grounds for equitable relief. It sets forth the tax deeds held by Complainant—the adverse fee simple title claimed by the defendant—that Complainant is entitled to possession and that defendant is keeping

him out of possession, or in the language of the Bill—"trying to obtain, take and keep possession thereof," and denying the right of possession of Complainant.

These allegations are sufficient as the basis of an action at law to recover possession, but there is not an allegation in the Bill showing any ground for equitable jurisdiction.

It is too well established to admit of argument, that a party out of possession cannot resort to a court of equity to remove a cloud on his title. The only exception to the application of this principle, is within those jurisdictions, where the distinction between actions at law and equity has been abolished, and a statute has authorized such a suit to be brought by one not in possession. Such a provision was embodied in the code of civil procedure of Nebraska, but for the very obvious reasons that all distinction between actions at law and in equity had been abolished, that but one action was recognized called "a civil action," and that original jurisdiction in all actions both legal and equitable was merged, and conferred upon the District Courts. But these provisions have no application in the courts of the United States, where the distinction between law and equity jurisdiction is maintained, and where the rule which excludes a party not in possession from a resort to a court of equity to remove a cloud on title, is still enforced. The Bill shows that complainant has a complete remedy at law. The allegations are that complainant "is the owner in fee simple and is entitled to possession of" the property described, and that the defendant "claims to be the owner in

fee simple," "and hinders and disturbs the complainant in his title to, and right of possession of the same." The allegations required to be embodied in the petition in an action at law for the recovery of real property under the Code of Nebraska, are that the plaintiff "has a legal estate therein and is entitled to the possession thereof," and "that the defendant unlawfully keeps him out of the possession." (Compiled Statutes of Neb., of 1881, p. 614, sec. 626). These are the allegations substantially, if not in terms, contained in the bill, and there are none other showing why it was necessary to come into a court of equity, and thereby deprive the defendant of his constitutional right of a trial by jury, as well as the right given by the statute of two trials. It is not necessary to allege, as Solicitors for Complainant seem to imagine, that defendant is in possession, but simply that he unlawfully keeps the plaintiff out of possession. Neither is it necessary in such action to prove that defendant is in possession, to entitle the plaintiff to recover, for Sec. 627 of the Code provides, "It shall be sufficient in such action, if the defendant in his Answer deny generally the title alleged in the petition, or that he withholds possession, as the case may be; but if he deny the title of the plaintiff, possession by the defendant shall be taken as admitted." So that it will be seen that a plain, adequate and complete remedy at law is provided for trying titles as between the parties to this suit, without any of the embarrassing questions as to possession suggested by Complainants' counsel. To entertain jurisdiction in this class of cases on the equity side of the court, would be to accomplish what the law of the State has

done for the practice in the State courts, namely to break down the distinction between actions at law and suits in equity, thus giving to the law of the State the effect of a repeal of the act of Congress regulating the jurisdiction of the Federal Courts. It is needless to add, after what has been already stated as to the infirmities of complainant's title, that if the court should be of the opinion that a court of equity can entertain jurisdiction of this Bill, the defendant desires an opportunity to answer.

T. M. MARQUETT,
G. W. DOANE,
Att'ys for Appellee.

1139 in the package 110—27

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 142.

THE CEDAR RAPIDS AND MISSOURI RIVER RAILROAD COMPANY AND THE IOWA RAILROAD LAND COMPANY, PLAINTIFFS IN ERROR, vs. BENJAMIN HERRING.

No. 143.

SAME, PL'FFS IN ERROR, vs. JOHN T. LAKE.

No. 144.

SAME, PL'FFS IN ERROR, vs. LEWIS IDDINGS.

No. 145.

SAME, PL'FFS IN ERROR, vs. DANIEL T. CUTLER.

No. 146.

SAME, PL'FFS IN ERROR, vs. PATRICK DUNDON.

No. 147.

SAME, PL'FFS IN ERROR, vs. ELIJAH W. BROOKS.

No. 148.

SAME, PL'FFS IN ERROR, vs. DAVID GREENSTREET.

No. 149.

SAME, PL'FFS IN ERROR, vs. CATHARINE M. WOOSTER.

No. 150.

SAME, PL'FFS IN ERROR, vs. WILLIAM T. BOYD.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

FILED OCTOBER 16, 1880.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 142.

THE CEDAR RAPIDS AND MISSOURI RIVER RAILROAD COMPANY AND THE IOWA RAILROAD LAND COMPANY, PLAINTIFFS IN ERROR, vs. BENJAMIN HERRING.

No. 143.

SAME, PL'FFS IN ERROR, vs. JOHN T. LAKE.

No. 144.

SAME, PL'FFS IN ERROR, vs. LEWIS IDDINGS.

No. 145.

SAME, PL'FFS IN ERROR, vs. DANIEL T. CUTLER.

No. 146.

SAME, PL'FFS IN ERROR, vs. PATRICK DUNDON.

No. 147.

SAME, PL'FFS IN ERROR, vs. ELIJAH W. BROOKS.

No. 148.

SAME, PL'FFS IN ERROR, vs. DAVID GREENSTREET.

No. 149.

SAME, PL'FFS IN ERROR, vs. CATHARINE M. WOOSTER.

No. 150.

SAME, PL'FFS IN ERROR, vs. WILLIAM T. BOYD.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

INDEX.

PLEADINGS.

	Original.	Print.
Answer	8	7
Amendment to answer	12	10

	Original.	Print.
Amendment to petition	14	12
Answer to amendment to petition	15	12
Motion for trial on written evidence and order therefor	11	9
Petition	3	4
Reply	11	9
Reply to amendment to answer	13	10
Stipulation for trial of nine causes on same testimony	15	12
Stipulation for joint abstract in the nine causes	3	4
PLAINTIFF'S TESTIMONY.		
Act of Congress May 15, 1856	15	12
Act of general assembly of Iowa, July 14, 1856	18	14
Act of general assembly of Iowa, March 17, 1860	22	17
Act of general assembly of Iowa, March 26, 1860	24	18
Act of Congress, June 2, 1864	28	21
Act of Congress, March 3, 1865	104	77
Exhibit 1. (Map of definite location of Iowa Central Air Line Railroad, filed July, 1857, with certificate)	34	26
2. (Letter from Henn to Commissioner General Land Office, September 4, 1856)	34	26
3. (Letter from Commissioner General Land Office to Henn, January 19, 1857)	35	26
4. (Letter from Commissioner General Land Office, to register and receiver, January 28, 1858)	35	27
5. (Order from Commissioner General Land Office to register and receiver, May 10, 1856)	36	27
6. (Letter from Commissioner General Land Office to register and receiver, May 15, 1856)	36	27
7. (Letter from Commissioner General Land Office to B. Henn, December 23, 1856)	37	28
8. (Letter from Commissioner General Land Office to B. Henn, January 19, 1857)	37	28
9. (Letter from Commissioner General Land Office to B. Henn, January 20, 1857)	37	28
10. (Letter from Commissioner General Land Office to B. Henn, November 24, 1858)	38	29
11. (Letter from Commissioner General Land Office to B. Henn, March 4, 1859)	38	29
12. (Letter from Commissioner General Land Office to B. Henn, October 28, 1859)	39	30
13. (Letter from Commissioner General Land Office to register and receiver, June 16, 1864)	39	30
14. (Letter from Commissioner General Land Office to Secretary Interior, June 25, 1864)	40	31
15. (Letter from Wm. T. Steiger to Commissioner, May 12, 1865)	40	31
16. (Letter from Secretary of Interior, May 26, 1865)	41	32
R. (Letter from Commissioner to Secretary of Interior, May 30, 1865)	41	32
L. (Letter from Secretary of Interior to Commissioner, June 2, 1865)	42	33
17. (Letter from Commissioner to register and receiver, June 7, 1865)	43	33
18. (Letter from Commissioner to register and receiver, July 16, 1866)	43	34

		Original.	Print.
Exhibit 19.	(Letter from Commissioner to Register and receiver, August 23, 1866)	44	34
20.	(Letter from Commissioner to register and receiver, September 20, 1866)	45	35
21.	(Letter from Commissioner to register and receiver, August 5, 1867)	45	35
22.	(Letter from Commissioner to register and receiver, November 11, 1867)	46	36
23.	(Letter from Blair to Commissioner, December 19, 1867)	46	36
24.	(Certificate of governor of Iowa as to completion Cedar Rapids & Missouri River Railroad)	47	37
25.	(Certificate of governor of Iowa as to completion Lyons Plug)	48	37
26.	(Map of Cedar Rapids & Missouri River Railroad, filed July 11, 1865)	49	38
27.	(Map of line and limits of Cedar Rapids & Missouri River Railroad, under act of May 15, 1856, and amended line and limits under act June 2, 1864)	49	39
28.	(Abstract of declaratory statement)	49	39
Burdette letter		50	39
Exhibit A.	(Attached to Burdette letter herein before introduced as Exhibit 13)	58	45
B.	(Attached to Burdette letter herein before introduced as Exhibit 14)	58	45
C.	(Attached to Burdette letter and dated August 22, 1864)	58	45
D.	(Attached to Burdette letter and dated August 24, 1864)	58	46
E.	(Attached to Burdette letter and dated August 25, 1864)	59	46
F.	(Attached to Burdette letter and dated May 2, 1865)	59	46
G.	(Attached to Burdette letter herein before introduced as Exhibit 15)	59	47
H.	(Attached to Burdette letter herein before introduced as Exhibit 16)	60	47
I.	(Attached to Burdette letter and dated May 27, 1865)	60	47
K.	(Attached to Burdette letter herein before introduced as Exhibit K)	60	47
L.	(Attached to Burdette letter herein before introduced as Exhibit L)	60	47
M.	(Attached to Burdette letter herein before introduced as Exhibit 17)	60	48
N.	(Attached to Burdette letter herein before introduced as Exhibit 19)	60	48
O.	(Attached to Burdette letter herein before introduced as Exhibit 20)	60	48
P.	(Attached to Burdette letter and dated September 21, 1866)	61	48
Stipulation for introduction of Burdette letter in evidence		61	48
Stipulation for introduction of maps in evidence		104	77
Statement of case and opinion in case Williams *vs.* Baker, 17 Wallace, and stipulation in regard thereto		104	77
Blair, John I, deposition		96	71
Exhibit C.	(Attached to Blair's deposition)	103	76
Steiger, Wm. T., deposition		82	61
Exhibit A.	(Attached to Steiger's deposition)	92	68
B.	(Attached to Steiger's deposition)	93	69
C.	(Attached to Steiger's deposition)	93	69
D.	(Attached to Steiger's deposition herein before set out as Exhibit K)	94	69

	Original.	Print.
Exhibit E. (Attached to Steiger's deposition herein before set out as Exhibit L)	94	70
F. (Attached to Steiger's deposition, with map)	94	70
G. and H. (Attached to Steiger's deposition herein before set out)	94	70
I. (Attached to Steiger's deposition in Burdette letter)	94	70
K. (Attached to Steiger's deposition and dated May 8, 1865)	94	70
L. (Attached to Steiger's deposition herein before introduced as Exhibit 15)	95	70
M. (Attached to Steiger's deposition and dated August 22, 1865)	96	71
N. (Attached to Steiger's deposition herein before set out as Exhibit 20)	96	71
Van Deventer, J., first deposition	61	48
Van Deventer, J., second deposition	77	57
DEFENDANT'S TESTIMONY.		
Exhibit 40. (Copy homestead entries)	105	77
41. (Copy of entries from tract-book)	107	78
42. (Copy final proof of homesteads)	109	79
43. (Copy railroad selections in Monona County)	111	81
44. (Copy list vacant lands, Monona County)	111	81
45. (Letter from Commissioner to register, December 8, 1864)	111	81
46. (Letter from Commissioner to register August 25, 1864)	112	81
47. (Telegram from Commissioner to register, August 26, 1864)	112	82
48. (Letter from Commissioner to register July 6, 1866)	113	82
49. (Letter from Commissioner to register, November 11, 1867)	113	82
50. (Notice from Commissioner to Land Office)	113	83
51. (Letter from Commissioner to Register November 1, 1867)	113	83
Letter from Commissioner to register August 5, 1867	113	83
52. (Letter from Commissioner to register, October 21, 1867)	114	83
53. (Letter from Commissioner to register, June 16, 1864)	114	83
54. (Petition in case Cedar Rapids & Missouri River Railroad Company *vs.* Woodbury County, *et al*)	114	83
Amendment to above petition	118	86
55. (Circular of instructions from Land Office)	119	87
56. and 57. (Copies of deeds from Cedar Rapids & Missouri River Railroad to Iowa Railroad Land Company)	122	89
58. (Map of location of Iowa Central Air Line Railroad & Cedar Rapids & Missouri River Railroad)	122	89
59. (Burdette letter herein before introduced, p. 50–61)	123	90
Lippencott letter	123	90
Exhibit A. (Attached to Lippencott letter)	126	92
B. (Attached to Lippencott letter)	127	93
C. (Attached to Lippencott letter)	127	93
H. (Attached to Lippencott letter)	127	93
Report register State Land Office, 1871	127	93
Exhibit 60. (Selection made by Henn, September 14, 1856)	138	101
61. (Letter from Commissioner dated October 25, 1877)	138	102
62. (Abstract declaratory statements)	139	102
Defendant's depositions:		
Boyd, Wm. T	127	93
Brooks, E. W	130	95
Bryant, G. H	136	100
Cutler, D. T	132	97

	Original.	Print.
Defendant's depositions—Continued.		
Dundon, P	127	93
Greenstreet, D	129	95
Herring, B	128	94
Hathaway, N. J	141	103
Holbrook, C. H	137	100
Holbrook, B. D	141	103
Hurst, T	141	103
Iddings, L	133	97
Lake, J. T	131	96
McCaskey, J. K	142	104
Wooster, C. F	133	98
Wooster, Q. A	134	99
Appeal	144	105
Assignment of error	144	106
Judgment	144	106
Letter from Commissioner to local land officers of June 16, 1864	146	107
Letter from Commissioner to Secretary of Interior of June 25, 1864	146	107
Letter from same to same of August 22, 1864	147	107
Letter from Secretary to Commissioner, August 24, 1864	147	108
Letter from Commissioner to local land office, August 25, 1864	148	108
Telegram from same to same August 27, 1864	148	108
Letter from same to same, December 8, 1864	148	109
Letter from John I. Blair to Secretary Interior, January 20, 1865	148	109
Letter from Hon. A. W. Hubbard to Secretary Interior, May 2, 1865	149	109
Letter from W. W. Walker to W. T. Steiger, of May 8, 1865	150	110
Letter from W. T. Steiger to Commissioner, May 12, 1865	151	111
Letter from Commissioner to Secretary Interior, May 26, 1865	152	111
Letter from latter to former, May 27, 1865	152	112
Letter from Commissioner to Secretary Interior, May 30, 1865	152	112
Letter from Secretary Interior to Commissioner, June 2, 1865	154	113
Letter from Commissioner to local land officers, June 7, 1865	154	113
Date of entries, Herring, Brooks, Greenstreet, and Iddings	155	114
Letter from W. T. Steiger to Secretary Interior, July 5, 1865	155	114
Letter from Secretary Interior to Commissioner, July 10, 1865	155	114
Filing of map of amended line	155	114
Endorsements on said map, Exhibit 26	156	114
Exhibit 27. (Map indicating original and amended line)	156	114
Exhibit 58. (Map of original and amended lines, and Onawa and Council Bluffs branches)	157	115
Letter from W. T. Steiger to Commissioner, August 22, 1865	157	115
Department requires appellants to select lands	158	116
Appellants appoint agents to make such selections	158	116
Notice of restoration to market	158	116
Letter from Commissioner to local land officers, July 6, 1866, enclosing notice of restoration and descriptive lists of lands restored	159	116
Letter from Commissioner to local land office, August 23, 1866, enclosing lists of lands subject to homestead and pre-emption	160	117
In such lists were lands outside 20-mile limits of modified line, but within original 15-mile limits	160	117
Entries of Lake, Cutler, and Dundon	160	117
Letter from Commissioner to local land officers, September 20, 1866	160	117
True date of this letter is September 20, 1866	161	118
Letter from Commissioner to local land officers, September 21, 1866	161	118
Selections of land under act of June 2, 1864, up to October 15, 1875	162	118

	Original.	Print.
Exact amount selected since that time not shown	162	119
Approvals up to November 16, 1875	162	119
Total lands approved to road up to November 16, 1875	163	119
Number of acres approved from November 16, 1875, to date of Vandeventer's testimony	163	119
Total amount of land received by appellants up to latter date	163	119
Letters from Commissioner to local land officers, August 5, 1867	163	120
Letters from Commissioner to local land officers, October 21, 1867	164	120
Letters from Commissioner to local land officers, November 1, 1867	164	120
Letters from Commissioner to local land officers, November 11, 1867	164	120
List of vacant lands transmitted with letter of November 11, 1867. Exhibit 44	164	120
Letter from John I. Blair to Commissioner, December 19, 1867	165	121
Petition of appellant, Cedar Rapids & Missouri River Railroad *vs.* B. F. Smith, *et al.*, filed in district court of Woodbury County, March 18, 1869	165	121
Amendment to said petition filed July 22, 1869	165	121
Date at which selections in Fort Dodge and Des Moines district were acted upon	165	121
Testimony of W. T. Steiger in regard to selections	165	121
Exhibit F, attached to W. T. Steiger's deposition	166	121
Map attached to W. T. Steiger's deposition, and also marked "Exhibit F".	167	122
Endorsement on list, Exhibit F, attached to Steiger's deposition	167	122
Exhibit 43. (Selections in Monona County by appellants)	169	123
Number of acres involved in pending suits	169	123
Length of road built by appellants, and times at which certain portions were completed	170	124
Entries of Boyd and Wooster	170	124
Date of commencement of suits	170	124
Act of Congress of April 21, 1876	170	124
Addenda	171	124

PROCEEDINGS IN SUPREME COURT OF IOWA.

Cause submitted	172	125
Opinion	173	125
Judgment	184	129
Petition for writ of error (Herring case)	186	130
Bond on writ of error (Herring case)	188	131
Writ of error (Herring case)	192	133
Citation (Herring case)	194	133
Proof of service (Herring case)	195	134
Petition for writ of error (Lake case)	196	134
Bond on writ of error (Lake case)	198	135
Writ of error (Lake case)	200	136
Citation and proof of service (Lake case)	202	137
Petition for writ of error (Iddings case)	203	137
Bond on writ of error (Iddings case)	205	138
Writ of error (Iddings case)	207	139
Citation and proof of service (Iddings case)	209	139
Petition for writ of error (Cutler case)	210	140
Bond on writ of error (Cutler case)	211	140
Writ of error (Cutler case)	213	141
Citation and proof of service (Cutler case)	215	142
Petition for writ of error (Dundon case)	216	143

	Original.	Print.
Bond on writ of error (Dundon case)	217	143
Writ of error (Dundon case)	219	144
Citation and proof of service (Dundon case)	221	145
Petition for writ of error (Brooks case)	222	145
Bond on writ of error (Brooks case)	223	146
Writ of error (Brooks case)	225	147
Citation and proof of service (Brooks case)	227	148
Petition for writ of error (Greenstreet case)	228	148
Bond on writ of error (Greenstreet case)	229	149
Writ of error (Greenstreet case)	231	150
Citation and proof of service (Greenstreet case)	233	150
Petition for writ of error (Wooster case)	234	151
Bond on writ of error (Wooster case)	235	152
Writ of error (Wooster case)	237	153
Citation and proof of service (Wooster case)	239	153
Petition for writ of error (Boyd esse)	240	154
Bond on writ of error (Boyd case)	241	155
Writ of error (Boyd case)	243	156
Citation and proof of service (Boyd case)	245	156
Clerk's certificate	246	157

a Supreme court of Iowa.

Hon. Austin Adams, chief-justice; Hon. Wm. H. Seevers, Hon. James G. Day, Hon. J. H. Rothrock, Hon. J. M. Beck, justices; E. J. Holmes, clerk.

b Supreme court of Iowa.

THE CEDAR RAPIDS & MISSOURI RIVER RAILroad Company and the Iowa Railroad Land Company, appellant,
vs.
BENJAMIN HERRING.

C. R. & MO. R. R. R. AND IA. R. R. LAND CO., app'lts,
vs.
CATHARINE M. WOOSTER.

C. R. & MO. R. R. R. & IA. R. R. LAND CO., app'lts,
vs.
JOHN T. LAKE.

C. R. & MO. R. R. R. & IA. R. R. LAND CO., app'lts,
vs.
DANIEL T. CUTLER.

C. R. & MO. R. R. R. & IA. R. R. LAND CO., app'lts,
vs.
PATRICK DUNDON.

C. R. & MO. R. R. R. & IA. R. R. LAND CO., app'lts,
vs.
LEWIS IDDINGS.

C. R. & MO. R. R. R. & IA. R. R. LAND CO., app'lts,
vs.
ELIJAH W. BROOKS.

c C. R. & MO. R. R. R. & IA. R. R. LAND Co., app'lts,
vs.
WM. T. BOYD.

C. R. & MO. R. R. R. & IA. R. R. LAND CO., app'lts,
vs.
DAVID GREENSTREET.

Appeal from Monona dist. court.

Be it remembered that heretofore, to wit, on the 9th day of August, 1879, there was filed in the office of the clerk of the supreme court of Iowa the abstract of appellants and additional abstract of appellees, in words and figures following, to wit:

1 We hereby admit one & personal service of this abstract & copy of same this 14th day of April, 1879.

MONK & SELLECK &
PLATT SMITH,
Att'ys for Def'ts.

In the supreme court of Iowa, September term, A. D. 1879.

THE CEDAR RAPIDS AND MISSOURI RAILROAD and The Iowa Railroad Land Company, appellants,
vs.
BENJAMIN HERRING, APPELLEE. } In equity.

R. & MO. R. R. R. AND IOWA R. R. LAND Co., appellants,
vs.
CATHERINE M. WOOSTER, APPELLEE. } In equity.

C. R. & MO. R. R. R. AND IOWA R. R. LAND Co., appellants,
vs.
JOHN T. LAKE, APPELLEE. } In equity.

C. R. & MO. R. R. R. AND IOWA R. R. LAND Co., appellants,
vs.
DANIEL T. CUTLER, APPELLEE. } In equity.

C. R. & MO. R. R. R. AND IOWA R. R. LAND Co., appellants,
vs.
PATRICK DUNDON, APPELLEE. } In equity.

C. R. & MO. R. R. R. AND IOWA R. R. LAND Co., appellants,
vs.
LEWIS IDDINGS, APPELLEE. } In equity.

C. R. & MO. R. R. R. AND IOWA R. R. LAND Co., appellants,
vs.
ELIJAH W. BROOKS, APPELLEE. } In equity.

2 C. R. & Mo. R. R. R. and Iowa R. R. Land Co., appellants, *vs.* Wm. T. Boyd, appellee. } In equity.

C. R. & Mo. R. R. R. and Iowa R. R. Land Co., appellants, *vs.* David Greenstreet, appellee. } In equity.

Appeal from the Monona County district court.

James F. Wilson, I. N. Kidder, and Joy & Wright, attorneys for appellants; Monk & Selleck and Platt Smith, attorneys for appellees.

APPELLANTS' ABSTRACT.

The above actions were brought by the plaintiff, The C. R. & Mo. R. R. R., to recover lands, as follows:

Of defendant Benjamin Herring, the E. hf. of NE. qr. of section 20, Tp. 84, R. 46.

Of defendant, Catherine M. Wooster, the E. hf. of SW. qr. sec. 12, Tp. 85, R. 43.

Of defendant Daniel T. Cutler, the S. half of NW. qr. sec. 10, Tp. 84, R. 46.

Of defendant John T. Lake, the N. hf. of SE. qr. sec. 4, Tp. 85, R. 42.

Of defendant Patrick Dundon, the SW. qr. of SW. qr. sec. 6, Tp. 84, R. 45.

Of defendant Lewis Iddings, the N. hf. of NE. qr. sec. 6, Tp. 85, R. 42.

Of defendant Elijah W. Brooks, the W. hf. of NE. qr. sec. 20, Tp. 84, R. 46.

Of defendant David Greenstreet, the SW. qr. of NE. qr. and SE. qr. of NW. qr. sec. 24, Tp. 85, R. 44.

By agreement between the parties the abstract of the pleadings, record, and testimony in said causes, are to be made and printed in one abstract, as the issues and testimony are substantially the same in the said nine suits, which agreement is as follows:

3 [Title of the 9 causes hereinbefore set out.]

It is hereby stipulated between the parties to the above-entitled causes now pending on appeal to the supreme court of Iowa, that the abstract of record, pleading, and evidence may all be made and printed in one abstract and submitted in said supreme court in said single abstract, the same as though an abstract was made and printed in each case; and any additional abstract that may be made in said causes may be made in one abstract and to have the same effect as though an additional abstract was made and printed in each case.

JOY & WRIGHT,
Attorneys for Plaintiff.
MONK & SELLECK,
Attorneys for Defendants.

(See Tr. pp. 1.)

On the 9th day of January, 1877, the plaintiff, The C. R. & Mo. River Railroad filed their

Petition

in said causes setting out their cause of action as follows (the petition in each case being substantially the same except the description of the land):

1. That the C. R. & Mo. R. Railroad is a corporation duly organized and doing business under the laws of the State of Iowa.

2. That petitioner is owner of and entitled to the present possession of the following-described land in Monona County, Iowa. (Here follows in each petition a description of the land claimed against each defendant respectively, as above set out.)

3. That the defendant wrongfully withholds the possession of said premises from your petitioner and claims the legal paramount title thereto.

4. And your petitioner further shows that Congress, by an actapproved May 15, 1856, entitled "An act making a grant of land to the State of Iowa in alternate sections to aid in the construction of certain railroads in said State," granted to the State of Iowa, to aid in the construction of a railroad from Lyons City northwesterly to a point of intersection with the main line of the Iowa Central Air Line Railroad, near Maquoketa, thence on said main line, running as near as practicable to the 42d parallel,
4 across the State of Iowa to the Missouri River, every alternate section of land, designated by odd numbers, for six sections in width on each side of said road. It was also further enacted in the same act, that in case it should appear, when the said line of road should be definitely fixed, that the United States had disposed of the land so granted, or any part thereof, then it should be lawful for any agent appointed by the governor of the State of Iowa to select, subject to the approval of the Secretary of the Interior, other lands in alternate sections, designated by odd numbers and within fifteen miles of the line of said railroad, an amount equal to those so disposed of by the United States.

5. The general assembly of the State of Iowa, by an act approved July 14, 1856, entitled "An act to accept the grant and to carry into execution the trust conferred upon the State of Iowa, by an act making a grant of land to the State of Iowa, in alternate sections, to aid in the construction of railroads in said State," approved May 15, 1856, granted the lands mentioned in the 4th paragraph hereof to the Iowa Central Air Line Railroad Company, upon certain conditions contained in said act.

6. The said Iowa Central Air Line Railroad Company, after the passage of the act last-above-mentioned, made a survey and location of the said line of railroad, and caused a map thereof to be made and filed as required by the said act of Congress; and the said line was so surveyed and staked out, and definitely located along and upon the surface of the land through the county of Monona, and past the land mentioned in the second paragraph of this petition, on the day of , A. D. 185 , and thereupon the limits of said grant became and were definitely fixed and located.

(The date of the location of said line past the lands in controversy in the said petitions in said cause varies, and the above blank in the different petitions is filled as follows: The date of location of line past lands of defendants Benjamin Herring, Wm. T. Boyd, Patrick Dundon, and Elijah

W. Brooks is alleged to have been March 29, 1857; date of location of line past lands of defendants Lewis Idding, Catherine M. Wooster, and John T. Lake, March 21, 1857, and date of location past lands of defendants Daniel T. Cutler and David Greenstreet, the 23d day of March, 1857.)

5 7. The said Iowa Central Air Line R. R. Co. having failed to construct the said railroad according to the provisions of the act referred to in the fifth paragraph above, the State of Iowa, by act of the general assembly of said State approved March 17, 1860, entitled "An act to resume the rights conferred upon the Iowa Central Air Line R. R. Co. by an act approved July 14, 1856, and to repeal certain law' in relation thereto," resumed the title to said land; and by another act approved March 16, 1860, entitled "An act to carry into execution the trust conferred upon the State in respect to lands granted by an act of Congress approved May 15, 1856, to aid in the construction of a railroad from Lyons City across the State of Iowa and near the 42d parallel to the Missouri River," granted to your petitioner all and so much of the lands, rights, interests, powers, as had been or might thereafter be conferred upon the State of Iowa by the act of Congress of May 15, 1856, aforesaid, to aid in the construction of a railroad from Lyons City, herein before mentioned, which grant was duly accepted by petitioner (C. R. &. Mo. R. R. R.).

8. That at the time of the location of the Iowa Central Air Line Railroad, as herein before stated, a large amount of the lands in sections designated by odd numbers within six miles of said railroad, as located, had been sold or otherwise disposed of by the United States. That after the location of said road, and in the year 1856, the governor of Iowa appointed one Bernhart Henn an agent, as provided in act of Congress approved May 15, 1856, to select other lands from those undisposed of in sections designated by odd numbers between the six and the fifteen mile limits mentioned in said act of Congress, in lieu of those previously disposed of within the six-mile limits.

That said agent, in pursuance of said appointment and by authority of said act of Congress, selected all the vacant and unappropriated land in sections designated by odd numbers between the six and the fifteen mile limits of said railroad, which lands so selected, together with those within the six-mile limits, were insufficient to make a full and complete grant of six sections to the mile, as contemplated by said act of Congress.

That in 1857 the Secretary of the Interior approved said selections and certified said lands, both those selected and those within the six-mile limits, to the State of Iowa.

6 9. Petitioner further shows that it being found, as herein before stated, that the lands so selected and granted were insufficient to make a full and complete grant of six sections to the mile, petitioner, by an act of Congress approved June 2, 1864, entitled "An act to amend an act entitled 'An act making a grant of land to the State of Iowa in alternate sections to aid in the construction of certain railroads in said State, approved May 15, 1856,'" was authorized to modify and change the then uncompleted line of the said road, and it was therein enacted and provided that the Secretary of the Interior should certify and cause to be conveyed to petitioner, as the work progressed along the main line of its road, out of any public lands belonging to the United States at the time of said grant,

not then sold, *sold*, reserved, or otherwise disposed of, or to which a pre-emption right or right of homestead settlement had not then attached, and on which a bona fide settlement and improvement had not been made under color of title from the United States, or from the State of Iowa, within fifteen miles of the original main line, an amount equal to that originally authorized to be granted to aid in the construction of said road by the act of Congress approved May 15, 1856, herein before referred to.

10. That said grant immediately attached to all the public lands within the fifteen miles of the original line of survey and included in that tract of land described in the second paragraph of this petition. That plaintiff located the modified line of the road, as provided in said act of June 2, 1864, on or before June 17, 1865, and completed its line of road to the Missouri River on the 2d day of July, 1867. That in order to make an amount of land equal to that intended to be granted by the act of Congress approved May 15, 1856, it required not only the lands certified, as stated in the 8th paragraph of this petition, but in addition thereto all the public lands within the fifteen miles of the original line of said road held by the United States on the 2d day of June, 1864, including the land claimed by plaintiff in this action. That upon the completion of said road this plaintiff became the absolute owner of said land to which its right had attached from and related back to June 2, 1864, and the United States held the legal title in trust for petitioner, and it became and was the duty of the Secretary of the Interior to certify and convey the said lands to your petitioner, which he has failed and neglected to do.

7 11. Petitioner further shows that by reason of some mistake or of some fraudulent representation made by the defendant, the character of which is unknown to the plaintiff, on the day of , A. D. 18 , said tract of land was wrongfully and unlawfully patented to the defendant by the United States, and he now holds the legal title in trust for the plaintiff. That the ownership of petitioner in said land has all times been paramount and superior to that of defendant, and that when petitioner's right to said land attached said defendant had no right, claim, or interest of any kind or nature in or to said land.

(The date of the patents to said several tracts of land to said several defendants are different, and said blanks above are filled in the several petitions according to the date of patent of each defendant, and are as follows: Date of patent of land to defendant Benjamin Herring, as alleged, April 1, 1872; date of patent of land to defendant Catherine M. Wooster, May 16, 1870; date of patent of land to defendant Daniel T. Cutler, January 15, 1873; date of patent of land to John T. Lake, April 10, 1874; date of patent of land to Patrick Dundon, April 10, 1874; date of patent of land to Lewis Iddings, January 15, 1873; date of patent of land to Elijah W. Brook, July 7, 1871; date of patent of land to W. T. Boyd, January 15, 1873; date of patent of land to David Greenstreet, January 15, 1873.)

Petitioner prays that its right, interest, and ownership in and to said premises may be adjudged and held paramount and superior to the claim and title of defendant; that said defendant may be held and adjudged to hold said land in trust for petitioner; that he may by decree of the court be ordered and required to make, execute, and deliver to petitioner a conveyance of said tract of land, and that thereafter plaintiff may be held to have and hold the full and complete legal title to said land; that defendant be forever and perpetually enjoined and restrained from having or assert-

ing any title to or control over or possession of said land; and that plaintiff may have a writ of possession of said land; and such other and further relief as may be just and equitable, and costs.

(Petitions duly verified. Tr., pp. 2–38.)

On the 31st day of March, 1877, the defendants in said causes filed their

8 *Answer*

in each case, being in substance as follows:

1. Defendant admits the due organization of plaintiffs as pleaded in 1st paragraph of petition.

2. Denies that plaintiff is owner of land described in 2d paragraph, or any part thereof, and says that said land belongs to defendant in fee-simple.

3. Denies the wrongful withholding of the possession of the land, as alleged in the 3d paragraph, but admits himself in possession, and claims the paramount title thereto.

4. Defendant admits on information the passage of the act of May 15, 1856, as stated in 4th paragraph, and that said stated odd-numbered sections were selected, but whether in accordance with law or not he does not know.

5. Defendant is informed and believes that the act of July, 1856, was passed as stated, and that the lands were conferred upon the Iowa Central Air Line R. R. Co., as therein set forth.

6. Defendant supposes the facts set forth in the 6th paragraph of petition to be true.

7. Defendant supposes, from information, that the facts set forth in the 7th paragraph of petition are true.

8. That the facts set forth in the 8th paragraph of the petition are probably true.

9. That the facts in the 9th paragraph of the petition are probably true.

10. Defendant is informed that the plaintiffs located their modified line and built their road to the Missouri River, but has no knowledge or information sufficient to form a belief as to the exact time or circumstances in relation to said grant, nor as to the construction or effect of the same; nor can the defendant state when said road was completed. He thinks it might have been some time in the year before stated. Defendant protests that he is unable to form an opinion as to the effect of the act of June 2, 1864. Defendant says that he believes the plaintiffs were not the owners of the land stated in the petition, and he is not aware of the exact duties of the Secretary of the Interior, or whether he neglected his duties or not. The defendant is not aware that he was ever trustee for the plaintiff, and therefore denies the same.

9 11. Defendant says, for further answer, that the cause of action did not accrue at any time within five years next before the commencement of this suit.

12. Defendant says that he obtained his patent in the usual way, and denies all fraud and mistake in the manner of procuring the same. That the defendant has been continuously in possession of said premises for

more than ten years next before the commencement of this suit, claiming the same as this defendant supposed by a good and lawful title, procured from the United States. That this possession has been continuous, open, notorious, and adverse; that defendant has made valuable improvements on said premises, has paid taxes thereon, and has never heard or been informed of any adverse claimant thereto until the commencement of this suit; that this defendant claims to be an innocent purchaser for a valuable consideration actually paid therefor, and reposed on that title in confidence and expended large sums of money in making such valuable improvements with the actual acquiescence and encouragement of plaintiffs, who neither claimed nor pretended to have any claim to the premises, but who claimed other lands elsewhere as the lands belonging to their grant; that they paid taxes, as the defendant is informed, on those lands, and advertised themselves to the world as the owners of those lands; that the defendant was led to believe by the conduct of plaintiffs and the officers having charge of the Land Department of the Government, that the lands taken by defendant were Government lands and open to settlement. And this defendant submits that it would be inequitable to grant the relief prayed for in plaintiffs' petition.

12 (a). Defendant further says that the land in controversy comprises a part of about 50,000 acres of uncertified lands now held and occupied by bona fide settlers under homestead, pre-emption, and private entry, and claimed by the plaintiff as indemnity lands under the grant mentioned in the petition. The plaintiffs, well knowing that none of said land had ever been certified to them by the Secretary of the Interior, or reserved from sale by such Secretary, and with full knowledge that the same were kept in market by the proper officer of the United States land office, and subject to homestead, pre-emption, and private entry, and such entries were being made in good faith from day to day to bona fide settlers, and that such settlers were bestowing their labor and expending large sums of money in improving said lands and erecting homes thereon, and paying large sums of money as taxes on said land, and while the plaintiffs' have been diligent in their efforts to dispose of such indemnity and other lands as have been certified to them under the same grants, and which were selected in the same localities of the same character as the lands in controversy, and kept the taxes paid on such certified lands, they have never offered to pay any taxes or assessments on the uncertified lands aforesaid or exercised any acts of ownership over them or taken any steps to have them certified to plaintiffs, or done any act or thing to make it known that they had any claim, right, title, or interest therein. But on the contrary, when they made their selection of indemnity lands under the grants aforesaid, they omitted to select any of the 50,000 acres before mentioned, and omitted all of such lands from the lists sent by them to the Secretary of the Interior for certification, thereby inducing said Secretary of the Interior to believe their grant was filled without any of the lands remaining uncertified and to keep them on the market subject to entry as aforesaid. That plaintiffs, from the time of the passage of the act of 1864, under which they claim title to the land in controversy, to the time of the commencement of this action, by their acts and conduct, as aforesaid, have proclaimed to the world that they had no claim to the uncertified lands aforesaid. That defendant and those under whom he claims

by the acts and conduct of the plaintiffs, were led to believe that the land in the petition described was Government land, subject to entry as aforesaid, and that acting on that belief the said lands were, on the day of , 18 , at the United States land office in the district in which the same were situated, entered in good faith by defendant and those under whom he claims had complied with all the laws of the United States and regulations of the Land Department in such cases made and provided, and have made valuable improvements upon said premises, to the amount of dollars, and have paid all the taxes and assessments levied upon said premises, and defendant avers that plaintiffs are now estopped from now asserting any claim or interest in or to the same.

(The date of entry in each case is different and amount of improvement made by said defendants varies, and the above blanks in each an-
11 swer as to date of entry and amount of improvements made by the respective defendants on their respective lands are filled in said answer and alleged as follows: Benjamin Herring, date of entry, June 1, 1865, and amount of improvements $2,000. Catherine M. Wooster, date of settlement as alleged, in the year 1867, and amount of improvements $1,500. No date of entry or amount of improvements filled in in answer of Daniel T. Cutler. John T. Lake, date of entry Aug. 14, 1866, and amount of improvements $500. Patrick Dundon, date of entry Aug., 1865, and no value of improvements inserted. Lewis Iddings, date of entry June 14, 1865, and amount of improvements $1,200. Elijah W. Brooks, date of entry May 28, 1865, and amount of improvements $1,500. Wm. T. Boyd, date of entry Dec., 1866, and amount of improvements $2,000. David Greenstreet, date of entry March 20, 1865, and amount of improvements $500.)

(Answer duly verified. Tr., pp. 50–118.)

At the appearance term a motion was made try said causes on written evidence. Motion sustained, and it was so ordered. (Tr., pp. 42–48.)

On the 26th day of May, 1877, the plaintiff, the C. R. and Mo. River R. R. filed a

Reply

to defendant's answer, in substance as follows:

Plaintiffs, for reply to the affirmative allegations in paragraphs 12 and 12 (a) of defendant's answer, aver that 10 years have not elapsed since plaintiffs' right of action herein accrued and since plaintiffs have been entitled to the possession of said land.

For further reply, denies that plaintiff never claimed said land and that defendants made any improvements thereon with the acquiescence and encouragement of plaintiff, and denies that defendant was led to believe by the conduct of plaintiff that *that* plaintiff made no claim thereto, and that said land was open to settlement. Denies that plaintiffs have asserted no claim to said lands and made no effort to have the same certified to them, but aver that the said lands were selected and claimed by said plaintiffs as land inuring to them under the said grant as in said petition alleged, and have made repeated efforts to have the same certified to them, and that the

entry thereof under which the defendants claim title was allowed by the Land Department over the objections and protests of plaintiffs herein.

12 Plaintiff further avers that said lands were wrongfully kept in market and entries thereof allowed over the objections and protests of the plaintiff herein. And plaintiff further says of the truth of the other affirmative allegations in paragraphs 12 and 12 (a) and paragraph 11 of defendant's answer, it has neither knowledge or information sufficient to form a belief.

(Reply duly verified. Tr., pp. 122–130.)

On the 19th day of November, 1877, the defendants filed in said causes

Amendment

to their answer, in substance as follows:

Defendant, for amendment to answer herein before filed, for the purpose of conforming the pleading to the proof, in addition to the affirmative allegations therein contained, says:

1. Denies that all lands in sections designated by even numbers within fifteen miles of said original main line, not sold or otherwise disposed of by the Government at the time of the passage of act of Congress of June 2, 1864, under which plaintiff claims were required or necessary to make the *the* amount authorized by the act of May 15, 1856, to be granted, or the amount per mile by said last-mentioned act intended to be granted, and particularly denies that the land in controversy was or is required or necessary for that purpose. And defendant alleges that plaintiff has already had certified to it more lands than was authorized or intended to be granted by either or both of said acts of Congress.

2. Defendant avers that said act of Congress of June 2, 1864, did not attach to any particular tract of land until it was selected by the plaintiff and reserved, certified, and conveyed to it by the Secretary of the Interior, and that the land in controversy was never selected, certified, reserved or conveyed under said grants, and that said grants never attached thereto.

3. Defendant avers that the grant of 1864, under which plaintiff claims, was for the modified line—that the modification of the uncompleted portion of plaintiffs' railroad was permitted by said act on condition that plaintiff should, within a reasonable time, build the branch road to some point in Monnona County in or at Onawa City. And that on the 21st day of April, 1876, the plaintiff having failed to comply with said

13 condition, and the Government having, by reason thereof, a reversionary interest in the land granted by said act of June 2, 1864, Congress, by the act approved April 21, 1876, entitled "An act to confirm homestead and pre-emption entries of public lands within the limits of railroad grants in cases where such entries have been made under the regulations of the Land Department," the entry and title of the said defendant to said premises has been ratified, established, confirmed, and declared to be valid.

Further answering, defendant avers that in September, 1869, plaintiff quitclaimed all its right, title, and interest in and to the lands in Monona County it had then received or might thereafter receive under said grants,

and that plaintiff has no further right or interest in or to any lands granted thereby.

That the homestead entry of defendant was made on the day of 18 .

(The date of the entry of said several defendants varies as alleged in said several answers, and the above blanks are filled in said several answers as follows:

Date of homestead entry of Benjamin Herring on the land claimed by him, May 31, 1865.

Date of private entry of Catherine M. Wooster, Oct. 18, 1869.

Date of homestead entry of Daniel T. Cutler, August 13, 1866.

Date of homestead entry of John T. Lake, August 17, 1866.

Date of homestead entry of Patrick Dundon, Aug. 24, 1866.

Date of homestead entry of Lewis Iddings, June 12, 1865.

Date of homestead entry of Elijah W. Brooks, May 31, 1865.

Date of homestead entry of W. T. Boyd, June 4, 1868.

Date of entry of David Greenstreet, March 20, 1865.)

(Amendment to answer duly verified.) (Tr., pp. 143–173.)

On the 24th day of November, 1877, said plaintiff filed—

Reply to amendment to answer,

which in substance is as follows:

1. Denies that any condition was attached to the modification of plaintiff's line of road as averred in the 3d paragraph of said amendment. Denies that plaintiff has failed to comply with any of the conditions of said grant. Denies that the act of Congress of April 21, 1876,
14 had any application to, or in any manner affected the claims or interests of the parties to this action in or to said land, and says that the right of plaintiff to said land had fully vested before the time of said act.

2. Denies that defendant is an innocent purchaser in good faith of said land, and avers that said defendant had notice, by the several acts of Congress, of the general assembly, and the orders of the Secretary of the Interior, of the Commissioners of the General Land Offi'e, and by the location of the line of road, and otherwise, of plaintiff's claim and right in and to said land.

3. Plaintiff denies that it has in fact conveyed said land to any person whatever, and avers:

That the Iowa Railroad Land Company was organized for the purpose, among other things, of purchasing, taking, holding, and disposing of such lands as plaintiff should receive under said several acts of Congress.

That plaintiff executed and delivered to said company a deed, or deeds, whereby it purported to convey to said company all the lands in said Monona County it should thereafter acquire.

That while said company had an equity, its legal rights and title attached only after the legal title should be acquired by plaintiff, and as to the uncertified lands, including the land in dispute, was intended only as a declaration of trust and agreement to convey.

That by an understanding between plaintiff and said company, not in

writing, plaintiff was to procure the legal title to said lands, and in pursuance of such understanding this action was commenced with the full knowledge and consent of said land company.

(Reply duly verified.) (Tr., pp. 181–189.)

On the 24th day of Nov., 1877, the C. R. & Mo. R. R. R. and the Iowa R. R. Land Company filed—

Amendment to petition,

as follows:

Now comes the plaintiff, and by leave of cour' first obtained, files this amendment to the petition and makes the Iowa Railroad Land Company upon its application a plaintiff herein, and avers:

That the Cedar Rapids and Missouri River Railroad Company, in the year 1869, by deed conveyed all the lands it then owned in
15 Monona County, Iowa, to the Iowa Railroad Land Company, and undertook to convey all the lands which it might acquire as enuring to it under the said grant of 1856, and the amendatory act of 1864. That under the said conveyance the legal title to the land thereafter acquired by the Cedar Rapids and Missouri River Railroad Company enured to the benefit of the Iowa Railroad Land Company. That by virtue of an oral agreement and understanding made between the said parties, the Cedar Rapids and Missouri River Railroad Company is to acquire the title to the lands accruing to it under the said grants of Congress, and after the title is acquired, to convey the same by proper descriptions to the Iowa Railroad Land Company. That by reason of the said deed or conveyance, the Iowa Railroad Land Company acquired an interest in the land in suit, and is therefore joined as plaintiff herein.

(Amendment to petition duly verified.) (Tr., pp. 175–180.)

And defendants in each of said causes filed answer to said amendment to petition as follows:

Denies that any oral agreement was made between Iowa R. R. Land Company and its coplaintiff, as in said amendment alleged, and defendant makes the same answer and defense to the allegations and pretended claims of each of said plaintiffs as is made to the allegations and pretended claims of the C. R. and Mo. R. R. R. in its original answer and amendments thereto, to which reference is hereby made, and the said answer and amendment thereto is hereby made a part thereof.

(Tr., pp. 191–200.)

It was stipulated that said nine causes should be heard and tried on same evidence. (Tr., pp. 132–142.) And said cause came on for hearing on the 24th day of November, 1877, and the testimony introduced was introduced to apply to and be used and considered in said nine cases herein, and the testimony was the same in all except as hereinafter specially mentioned.

Plaintiff's testimony.

Plaintiff offers in evidence the act of Congress approved May 15, 1856, making a grant of land to the State of Iowa to aid construction of certain railroads in said State, viz:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be, and is
16 hereby, granted to the State of Iowa, for the purpose of aiding in the construction of railroads from Burlington, on the Mississippi River, to a point on the Missouri River near the mouth of the Platte River; from the city of Davenport via Iowa City and Fort Des Moines to Council Bluffs; from Lyons City northwesterly to a point of intersection with the *the* main line of the Iowa Central Air Line Railroad, near Maquoketa, thence on said main line, running as near as practicable to the 42d parallel across the said State to the Missouri River; from the city of Dubuque to a point on the Missouri River near Sioux City, with a branch from the mouth of the Tete Des Morts to the nearest point on said road, to be completed as soon as the main road is completed to that point, every alternate section of land, designated by odd numbers, for six sections in width on each side of each of said roads. But in case it shall appear that the United States have, when the lines and routes of said roads are definitely fixed, sold any sections, or any parts thereof, granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents to be appointed by the Governor of said State to select, subject to the approval of the Secretary of the Interior, from the lands of the United States, nearest to the tiers of sections above specified, so much land in alternate sections, or parts of sections, as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the rights of pre-emption have attached as aforesaid; which lands (thus selected in lieu of those sold and [to] which pre-emption rights have attached as aforesaid, together with the sections, and parts of sections, designated by odd numbers as aforesaid, and appropriated as aforesaid) shall be held by the State of Iowa for the use and purpose aforesaid; Provided that the land to be so located shall, in no case, be further than fifteen miles from the lines of said roads, and selected for and on account of each of said roads; provided further, that the land hereby granted for and on account of said roads severally shall be exclusively applied in the construction of that road for and on account of which such lands are hereby granted and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatsoever; and provided further, that any and all lands heretofore reserved to the United States, by any act of Congress, or in any other manner by competent authority for the purpose of aiding in any object of internal improvement, or for any other purpose whatsoever, be and the same are hereby reserved to the United
17 States from the operation of this act, except so far as it may be found necessary to locate the routes of said railroads through such reserved lands, in which case the right of way only shall be granted, subject to the approval of the President of the United States.

SEC. 2. And be it further enacted, That the sections and parts of sections of land which, by such grant, shall remain to the United States within six miles on each side of said roads, shall not be sold for less than double the minimum price of the public lands when sold; nor shall any of said lands become subject to private entry until the same shall have been first offered at public sale at the increased price.

SEC. 3. And be it further enacted, That the said lands hereby granted to the said State shall be subject to the disposal of the legislature thereof for

the purposes aforesaid and no other; and the said railroads shall be and remain public highways for the use of the Government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States.

SEC. 4. And be it further enacted, That the lands hereby granted to said State shall be disposed of by said State only in the manner following, that is to say, that a quantitity of land not exceeding one hundred and twenty sections for each of said roads, and included within a continuous length of twenty miles of each of said roads, may be sold; and when the governor of said State shall certify to the Secretary of the Interior that any twenty miles, continuous miles, of any of said roads is completed, then another quantity of land hereby granted, not to exceed one hundred and twenty sections for each of said roads having twenty continuous miles completed as aforesaid, and included within a continuous length of twenty miles of each of such roads, may be sold, and so from time to time until said roads are completed; and if any of said roads are not completed within ten years, no further sale shall be made, and the lands unsold shall revert to the United States.

SEC. 5. And be it further enacted, That the United States mail shall be transported over said roads, under the direction of the Post-Office Department at such prices as Congress may by law direct; provided, that until such price is fixed by law the Postmaster-General shall have the power to determine the same.

Approved May 15, 1856. (Tr., pp. 236–232.)

18 And plaintiff introduced the act of the general assembly of the State of Iowa, approved July 14, 1856, viz:

An act to accept of the grant and carry into execution the trust conferred upon the State of Iowa, by an act of Congress entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of railroads in said State," approved May 15, 1856.

SECTION 1. Be it enacted by the general assembly of the State of Iowa, That the lands, rights, powers, and privileges, granted to and conferred upon the State of Iowa, by an act of Congress entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of railroads in said State," approved May 15, 1856, be, and the same are hereby, accepted upon the terms, conditions, and restrictions contained in said act of Congress.

SEC. 2. That so much of the lands, interests, rights, powers, and privileges as are or may be granted and conferred, in pursuance of the act of Congress aforesaid, to aid in the construction of a railroad from Burlington, on the Mississippi River, to a point on the Missouri River near the mouth of the Platte River, are hereby disposed of, granted, and conferred upon the Burlington and Missouri River Railroad Company, a body corporate, created and existing under the laws of the State of Iowa.

SEC. 3. That so much of the land, interests, rights, powers, and privileges as are or may be granted and conferred, in pursuance of the act of Congress aforesaid, to aid in the construction of a railroad from Davenport via Iowa City and Fort Des Moines to Council Bluffs, are hereby disposed of, granted, and conferred to and upon the Mississippi and Missouri Rail-

road Company, a body corporate, created and existing under the laws of the State of Iowa.

SEC. 4. That so much of the lands, interests, rights, powers, and privileges as are or may be granted and conferred, in pursuance of the act of Congress aforesaid, to aid in the construction of a railroad from Lyons City northwesterly to a point of intersection with the main line of the Iowa Central Air Line Railroad, near Maquoketa, thence on said main line, running as near as practicable to the 42d parallel, across the said State to the Missouri River, are hereby disposed of, granted, and conferred to and upon the Iowa Central Air Line Railroad Company, a body corporate, created and existing under the laws of the State of Iowa.

19 SEC. 5. That so much of the land, interests, rights, powers, and privileges as are or may be granted and conferred, in pursuance of the act of Congress aforesaid, to aid in the construction of a railroad from the city of Dubuque to a point on the Missouri River at or near Sioux City, with a branch from the mouth of the Tete Des Morts to the nearest point on the said road, to be completed as soon as the main line is completed to that point, are hereby disposed of, granted, and conferred to and upon the Dubuque and Pacific Railroad Company, a body corporate, created and existing under the laws of the State of Iowa.

SEC. 6. The lines and routes of the several roads above described shall be definitely fixed and located on or before the 1st day of April next after the passage of this act, and maps or plats showing such lines and routes shall be filed in the office of the governor of the State of Iowa and also in the office of the secretary of the State of Iowa. It shall be the duty of the governor, after affixing his official signature, to file such map in the department having the control of the public lands in Washington, such location being considered final only so far as to fix the limits and boundary in which lands may be selected; and if it shall appear that the lands that have been donated by the act of Congress aforesaid, for the construction of the several lines above indicated, cannot be obtained within the limits and along any part of the lines aforesaid, the governor shall from time to time appoint agents to make such selections as may be authorized or granted by Congress for the lines aforesaid; but the compensation of such agents and the costs, expenses, and charges attendant upon and occasioned by making such selections shall be fixed, regulated, paid, and borne by each of said railroad companies respectively, upon and for its own line.

SEC. 7. The Iowa Central Air Line Railroad Company shall furnish, equip, and operate the branch of their railroad that will be constructed under the grant from Lyons City to the point of intersection with the main line of their road near Maquoketa in the same manner with their line from the west and as completely as though the same was a continuation of said main line, and shall never give any preference to the main line of said road or any part thereof, as defined in their articles of incorporation, by business arrangements, tariff of prices, or otherwise over the said branch of their railroad.

20 SEC. 8. The grants aforesaid are made to each of said companies respectively, upon the express condition that in case either of said railroad companies shall fail to have completed and equipped 75 miles of the road within three years from the 1st day of December next, 30 miles in addition in each year thereafter for five years, and the remainder of their

whole line of road in one year t'ereafter, or on the 1st day of December, A. D. 1865, then and in that case it shall be competent for the State of Iowa to resume all rights conferred by this act upon the company so failing, and to resume all rights to lands hereby granted and remaining undisposed of by the company so failing to have the length of road completed in manner and time as aforesaid.

SEC. 9. The roads aforesaid shall be constructed upon a gauge with a width of four feet eight and one-half inches, and the iron used in the track shall be of approved quality and pattern, and the said roads shall be completed and furnished in a style and of a quality equal to the average of other first-class western roads, and when the roads, or any of them, authorized to be constructed by this act shall be intersected by the roads of any other railroad company now constructed, or to be hereafter constructed, it shall be the duty of such road or roads receiving the benefit of this act to furnish all proper and reasonable facilities and to join such other company in making all necessary crossings, turnouts, sidelings, and switches and other conveniences necessary for the transportation of all freight and passengers over either or any road or roads hereby mutually accommodated, whether said passengers or freight are brought by the roads benefited by this act or any other road or roads now constructed, or which may hereafter be constructed, and at such rates as shall not in any case exceed the regular tariff or charges on such road or roads.

SEC. 10. All persons who at the time said grant was made held valid claims by actual occupation and improvement upon any of the lands embraced in said grant shall be protected in the same and entitled to purchase and enter the same upon the terms and conditions hereinafter provided.

SEC. 11. Any person wishing to avail himself of the provisions of this act shall, within three months after the passage thereof, file his application for that purpose with the judge of the county where such lands
21 may be situate, and shall prove to the satisfaction of the said judge that his claim is valid, and that the same existed at the time said grant was made; and upon such proof being made such judge shall give to the applicant a certificate of the fact, and such certificate shall entitle the holder or bona fide assignee to enter such land at the rate of $2.50 per acre; provided that no person, claimant, or the assignee of a claim, shall be entitled to more than one hundred and sixty acres of land under this act; and provided further, that the person asserting a claim, whether as claimant or assignee, shall file his affidavit that he has not, either directly or indirectly, received the benefit of the provisions of this act. Before any rights shall be acquired under such certificate a copy of the same together with the evidence shall be served upon the secretary of the company interested, and such company shall have the right to appeal from the decision of such judge to the district court in the same manner as appeals are taken from the decisions of justices of the peace, at any time within ninety days after the service of such papers, and the same shall be tried as other appeal cases, and an appeal may be taken to the supreme court by either party, in the same manner as appeals in other cases.

SEC. 12. Such certificate, on being filed with the secretary of the company on whose line of road such lands may be situate, when no appeal has been taken as herein provided, shall entitle the holder or his assignee to the possession of said land until the title shall become vested in the com-

pany; upon payment thereafter to the treasurer of the company for said land at the price above designated, such person shall receive from the secretary of said company a patent to such land, not exceeding in quantity 160 acres. Such deed or patent shall vest in the purchaser all the title of said company in and to such lands, except so far as to reserve to the company all such right of way and station grounds as may be actually necessary for the uses of the company.

SEC. 13. The said companies shall each severally assent to and accept the provisions of this act, by a written instrument under the seal of such corporation, with the signature of the proper officers within 90 days after the passage of this act, which said acceptance shall be filed in the office of the Secretary of State, and be by the secretary recorded in the books kept by him for the recording of articles of association.

22 SEC. 14. Said railroad companies, accepting the provisions of this act, shall at all times be subject to such rules and regulations as may from time to time be enacted and provided for by the general assembly of Iowa, not inconsistent with the provisions of this act and the act of Congress making the grant.

SEC. 15. It shall be the duty of the companies receiving the benefit of this act to make a regular annual report of their proceedings at the usual time and place of electing their officers, exhibiting a detailed statement as far as practicable of the amount of their expenditures, liabilities, &c., a copy of which shall be filed in the office of the secretary of state.

SEC. 16. Be it further enacted, That any of said companies accepting the grant of lands under this act shall take the same with the conditions imposed and incumbrances specified in this act, and shall in no event have any claim or recourse whatever upon the State of Iowa for a misapplication of said grant, incumbrances, or conditions in this act imposed.

SEC. 17. This act shall take effect and be in force from and after its publication in the Iowa Capital Reporter and Iowa City Republican.

Approved July 14, 1856.

I certify that the foregoing was published in the Iowa Capital Reporter and Iowa City Republican on the 16th day of July, 1856.

GEO. W. McCLEARY,
Secretary of State.

(Tr., pp. 233–243.)

And the plaintiff introduced the act of the general assembly of the State of Iowa, approved March 17, 1860, viz:

An act to resume all rights conferred upon the Iowa Central Air Line Railroad Company by an act approved July 14, 1856, and to repeal certain laws in relation thereto.

Whereas, by the act of Congress approved May 15, 1856, there were granted to the State of Iowa certain lands to aid in the construction of certain railroads in said State, upon certain terms, conditions, and restrictions, under which said lands might be disposed of; and

Whereas the general assembly of the State of Iowa, by an act approved July 14, 1856, accepted said grant of lan ls upon the terms, con-

ditions, and restrictions contained in said act of Congress, and con-
23 tracted with the Iowa Central Air Line Railroad Company for the sale, upon certain terms, of that portion of said lands granted by said act of Congress to aid in the construction of a railroad from Lyons City, northwesterly to a point of intersection with the main line of the Iowa Central Air Line Railroad, near Maquoketa, thence on said main line, running as near as practicable to the 42d parallel, across the said State to the Missouri River; in consideration of the understanding on the part of said company, and subject to the conditions and restrictions contained in said act and the act of Congress aforesaid; and

Whereas the said Iowa Central Air Line Railroad Company has wholly failed to perform on their part the conditions of said acts, and has utterly failed to construct any part of said railroad as required by law and by the terms of their contract, and has failed to complete and equip any portion of said road thereby at the option of said State, annulling all their rights to the lands and privileges under and by virtue of said acts by reason whereof the State of Iowa has the right to resume all said rights and privileges, and all the rights in relation to said lands so as aforesaid conferred upon said company by said State; and

Whereas no part of said lands have been actually conveyed by this State to said company, nor by said company disposed of pursuant to the provisions of said acts; and inasmuch as the interest of the State in said lands and the construction of the road to aid which said lands were granted by Congress, as also the good faith of the State in executing the trust conferred to it by Congress, require that the State should resume said rights and privileges and all rights to the land aforesaid: Now, therefore,

Be it enacted by the general assembly of the State of Iowa, That all rights to the lands, interest, rights, powers, and privileges heretofore conferred or intended to be upon the Iowa Central Air Line Railroad Company by an act approved July 14, 1856, entitled "An act to accept of the grant and carry into execution the trust conferred upon the State of Iowa by an act of Congress entitled 'An act making a grant of lands to the State of Iowa in alternate sections to aid in the construction of certain railroads in said State' approved May 15, 1856," be, and the same are hereby, absolutely and entirely resumed by the State.

SEC. 2. The 4th section of said act approved July 14, 1856, and all other acts and parts of acts inconsistent with this act are hereby repealed.

24 SEC. 3. This act shall take effect and be in force from and after its publication in the daily Iowa State Register and daily Iowa State Journal, published at the city of Des Moines.

Approved March 17, 1860.

I hereby certify that the foregoing act was published in the daily Iowa State Register March 21, 1860, and in the daily Iowa State Journal March 22, 1860.

ELIJAH SELLS,
Secretary of State.

(Tr., pp. 245–248.)

And the plaintiff introduced in evidence the act of the general assembly of the State of Iowa, approved March 26, 1860, viz:

An act to carry into execution the trust conferred upon the State of Iowa in respect to the lands granted by an act of Congress approved May 15, 1856, to aid in the construction of a railroad from Lyons City across the State of Iowa and near the 42d parallel to the Missouri River.

SECTION 1. Be it enacted by the general assembly of the State of Iowa, That so much of the lands, interests, rights, powers, and privileges as have been or may be granted and conferred in pursuance of the act of Congress entitled "An act making a grant of lands to the State of Iowa in alternate sections to aid in the construction of railroads in said State," approved May 15, 1856, to aid in the construction of a railroad from Lyons City northwesterly to a point of intersection with the main line of the Iowa Central Air Line Railroad near Maquoketa; thence on said main line, running as near as practicable to the 42d parallel across the State of Iowa to the Missouri River, are hereby disposed of, granted, and conferred to and upon the Cedar Rapids and Missouri River Railroad Company, a body corporate, created and existing under the laws of the State of Iowa; provided, however, that no portion of the grants of land provided for in this act shall be applied in the liquidation of any debt or obligation heretofore made or contracted by the said Cedar Rapids and Missouri River R. R. Co., or of the Chicago, Iowa and Nebraska R. R. Co.; provided further, that it is hereby declared to be the true aim, intent, and meaning of this act that the State of Iowa, according to the conditions herein specified, conveys and grants to the Cedar Rapids and Missouri R. R. Co. her right, title to, and interest in the aforesaid lands, and nothing more; and in no event shall said company have any claim or recourse against the State for any defect in the title or conveyance of said lands.

SEC. 2. The grant by this act conferred upon said company is made upon the express condition that in case said company shall fail to have completed and equipped forty miles of its road along the route aforesaid, and west from some convenient point on the Cedar River, near the 42d parallel, within one year from the 1st day of December next, after the passage of this act, thirty miles in addition, each year thereafter, for two years, and the remainder of their whole line of road in two years thereafter, or by the 1st day of December, 1865, then and in that case it shall be competent for the State of Iowa to resume all rights conferred by this act upon said company so failing, and to resume all rights to the lands hereby granted and remaining undisposed of to the company so failing to have the length of road completed in manner and time as aforesaid.

SEC. 3. The provisions of the ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, and fifteenth sections of the first chapter of the laws of Iowa, passed at the extra session of the fifth general assembly, and approved July 14, 1856, so far as the same are applicable to this company under the provisions of this act, and the one hundred and eighty-second chapter of the laws of this State, enacted by the sixth general assembly, and approved January 28, 1857, and the eighty-fifth chapter of the laws of this State, enacted by the seventh general assembly, and approved March 20, 1858, so far as said enactments are not inconsistent with the provisions of this act be, and the same are hereby, made applicable to this company, receiving the benefits of the grant hereby conferred; and

it is further provided, that said railroad shall be and remain a public highway for the use of the Government of the United States, free from toll or other charges upon the transportation of any property or troops of the United States; and if the said company shall accept this grant upon the conditions aforesaid, which acceptance shall appear by an express writing, under the seal of said corporation, with the signatures of its president and secretary, and shall be filed in the office of the secretary of the State of Iowa, within ninety days after the approval of this act by the governor, it shall take the same with the conditions imposed and incumbrances specified in this act; and shall in no event have
26 any claim or recourse whatever upon the State of Iowa, for a misapplication of said grant, incumbrances, or conditions in this act imposed.

SEC. 4. It is hereby further provided, that said Cedar Rapids and Missouri River Railroad Company shall be entitled to the full amount of land authorized by said act of Congress, as the work progresses, for the first three sections of road, of twenty miles each, which shall be constructed by said company; but thereafter as the work progresses they shall be entitled to an equal pro rata apportionment of the land remaining subject to appropriation in aid of this work, to be ascertained by a division of the quantity of lands so remaining by the number of whole sections of twenty miles each extending from the point of construction then reached to the Missouri River.

SEC. 5. It is further expressly provided, that this act shall not be so construed as to give title to any portion of said lands to the company accepting the provisions hereof, otherwise than as the work progresses, and as provided in the act of Congress aforesaid, conferring the lands upon the State of Iowa, namely: When they shall have completed each section of twenty miles of road aforesaid they shall be entitled to the amount of land apportioned thereto, and not before; and they shall not become entitled to the first one hundred and twenty sections authorized by act of Congress until such first section of their road shall have been completed, at which time they shall become entitled to the first apportionment of land. Nor shall this act be so construed as in any manner to prevent the general assembly of this State from resuming, upon failure of either of the conditions named in the second section of this act, all lands to which the said company shall not have then become entitled by completion of one or more sections, as aforesaid, of said road.

SEC. 6. And it is further expressly provided, that said company shall build or cause to be built, before the 1st day of January, 1861, a railroad of like gauge and equal in quality to the Chicago, Iowa and Nebraska Railroad, from Pearl street, in Lyons City, to a point of intersection with the Chicago, Iowa and Nebraska Railroad, within the corporate limits of Clinton City, with such switches and side tracks as the business of said town of Lyons may require; and to operate or cause to be operated the same by running passenger and freight cars of the same class with those used by the Chicago, Iowa and Nebraska Railroad, in
27 close connection forever with all regular trains at any time run on the said Chicago, Iowa and Nebraska Railroad, without occasioning any unnecessary delay to freight or passengers at said point of intersection; and the charge per mile for transportation of freight or passengers shall never exceed the regular charges for like service on the Chicago, Iowa and

Nebraska Railroad; the intent and meaning of this section being to secure to the citizens of Lyons the same privileges and benefits of a railroad connection that are enjoyed by any other place on said Chicago, Iowa and Nebraska Railroad; and it is further expressly provided that no lands shall be certified by the governor to said Cedar Rapids and Missouri River Railroad Company until they have complied with all the requirements of this section.

SEC. 7. Said company shall not commence to build or construct said road at any point further west from the Mississippi River than the town of Marion, in Linn County, Iowa, and the governor of the State shall not certify any of the lands herein transferred to said company until that portion of the road between Marion and the city of Cedar Rapids, together with so much more of said road as to make in the aggregate at least twenty miles, shall be completed, equipped, and operated by said company or its successors.

SEC. 8. And be it further enacted, That it shall be deemed a felony for the president and directors or managers of the said railroad company accepting the grant of land to be conveyed by this act to wilfully misapply any of the land herein granted to any other purpose than the carrying into effect of the true meaning and intent of this act, and the president, directors, or managers of said railroad company who may be guilty of any such wilful misapplication of the lands herein granted shall be liable to a fine of not less than five thousand dollars, or imprisonment in the county jail not less than twelve months and not more than three years, or both such fine and imprisonment, at the discretion of the court before whom any case may be tried.

SEC. 9. It is further expressly provided, that if said Cedar Rapids and Missouri River Railroad Company shall fail or refuse to accept of this grant upon the conditions hereby imposed, and in time and manner, as aforesaid, the census board of this State is hereby authorized, by proper writing, with the seal of the State affixed thereto, to confer the same upon such party or company as shall, in their judgment, be competent to carry out the enterprise herein before provided for in good faith, and which shall
28 accept the grant by a proper written instrument, duly executed and *and* attested, and shall file the same in the office of the secretary of this State, subject to all the preceding sections of this act, and the same shall in that case be applicable to such grantee, subject to all the foregoing terms and conditions of this act as fully as if named and originated herein.

SEC. 10. This act shall take effect and be in force from and after its publication in the Iowa State Register and in the Iowa State Journal.

Approved March 26, 1860.

I hereby certify that the foregoing act was published in the Iowa State Journal April 7, 1860, and in the Iowa State Register April 11, 1860.

ELIJAH SELLS,
Secretary of State.

(Tr., pp. 249–257.)

And plaintiff introduced in evidence the act of Congress approved June 2, 1864, viz:

An act to amend an act entitled "An act making a grant of land to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," approved May 15, 1856.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Mississippi and Missouri Railroad Company, a corporation established by the laws of the State of Iowa, and to which the said State granted a portion of the land grant mentioned in the title of this act, to aid in the construction of a railroad from Davenport to Council Bluffs in said State, may modify or change the location of the uncompleted portion of its line, as shown by the map thereof now on file in the General Land Office of the United States, so as to secure a better and more expeditious line for connection with the Iowa branch of the Union Pacific Railroad; provided, nevertheless, that said new line, if located, shall in every case pass through the corporate limits of the cities of Des Moines and Council Bluffs; and the right of way over the public lands of the United States is hereby granted to said railroad company for that purpose; provided, that said line shall pass through the town of Newton, in Jasper County, or as near said town as may be found practicable, and not further north of said town than the north line of section twenty-two, township eighty north, of range nineteen, according to
29 United States survey, if the citizens of the county of Jasper shall first pay to said company the difference in cost, if any, between the line proposed by the company and the one contemplated by this proviso, including extra cost of right of way, if any, said difference in cost to be estimated by competent engineers, to be selected by the parties.

SEC. 2. And be it further enacted, That whenever such new location shall have been established the said railroad company shall file in the General Land Office at Washington a map definitely showing such new location; and the Secretary of the Interior shall cause to be certified and conveyed to said company from time to time, as the road progresses, out of any public lands now belonging to the United States not sold, reserved, or otherwise disposed of, or to which a pre-emption claim or right of homestead settlement has not attached, and on which a bona fide settlement and improvement has not been made under color of title from the United States, or from the State of Iowa, within six miles of such newly located line, an amount of land per mile equal to that originally authorized to be granted to aid in the construction of said road by the act to which this is an amendment; and if the amount of land granted by the original act to aid in the construction of said railroad shall not be found within the limit of six miles from said line, then such selections may be made along such line within twenty miles thereof; provided, that the said company shall not be entitled to, and shall not receive, any land upon this grant which is situate within fifteen miles of the line of the Burlington and Missouri River Railroad, as indicated by the map of said road, now on file in the General Land Office.

SEC. 3. And be it further enacted, That the Burlington and Missouri River Railroad Company, a corporation organized under the laws of the State of Iowa, and to which said State granted a portion of the land grant mentioned in the title of this act to aid in the construction of a railroad from Burlington, in said State, to the Missouri River, shall be entitled to receive, and the Secretary of the Interior shall cause to be certified and

conveyed to said company, from time to time, as the road progresses, out of any public lands now belonging to the United States not sold, reserved, or otherwise disposed of, or to which a pre-emption claim or right of homestead settlement has not attached, or on which a bona fide settlement
30 and improvement has not been made under color of title derived from the United States or from the State of Iowa, within six miles of said road, as now located, an amount of land per mile equal to that mentioned in the act to which this act is an amendment, as intended to aid in the construction of said road, and if the amount of land granted by the original act to aid in the construction of said road shall not be found within the limit of six miles from the line of said road, then such selections may be made along such line within twenty miles thereof.

SEC. 4. And be it further enacted, That the Cedar Rapids and Missouri River Railroad Company, a corporation established under the laws of the State of Iowa, and to which the said State granted a portion of the land mentioned in the title of this act, may modify or change the location of the uncompleted portion of its line, as shown by the map thereof, now on file in the General Land Office of the United States, so as to secure a better and more expeditious line to the Missouri River and to a connection with the Iowa branch of the Union Pacific Railroad; and for the purpose of facilitating the more immediate construction of a line of railroads across the State of Iowa, to connect with the Iowa branch of the Union Pacific Railroad Company, aforesaid, the said Cedar Rapids and Missouri River Railroad Company is hereby authorized to connect its line by a branch with the line of the Mississippi and Missouri Railroad Company; and the said Cedar Rapids and Missouri River Railroad Company shall be entitled, for such modified line, to the same lands and to the same amount of lands per mile, and for such connecting branch the same amount of land per mile, as originally granted to aid in the construction of its main line, subject to the conditions and forfeitures mentioned in the original grant, and, for the same purpose, right of way through the public lands of the United States is hereby granted to said company. And it is further provided, that whenever said modified main line shall have been established or such connecting line located, the said Cedar Rapids and Missouri River Railroad Company shall file in the General Land Office of the United States a map definitely showing such modified line and such connecting branch aforesaid; and the Secretary of the Interior shall reserve and cause to be certified and conveyed to said company, from time to time, as the work progresses on the main line, out of any public lands now belonging to the United States not sold, reserved, or otherwise disposed of, or to which a pre-emption right or right of homestead settlement
31 has not attached, and on which a bona fide settlement and improvement has not been made under color of title derived from the United States or from the State of Iowa, within fifteen miles of the original main line, an amount of land equal to that originally authorized to be granted to aid in the construction of the said road by the act to which this is an amendment. And if the amount of land per mile granted or intended to be granted by the original act to aid in the construction of said railroad shall not be found within the limits of the fifteen miles therein prescribed, then such selections may be made along said modified line and connecting branch within twenty miles thereof; provided, however, that such new

located or modified line shall pass through or near Boonsboro', in Boone County, and intersect the Boyer River not further south than a point at or near Dennison, in Crawford County; and provided further, that in case the main line shall be so changed or modified as not to reach the Missouri River at or near the forty-second parallel north latitude, it shall be the duty of said company, within a reasonable time after the completion of its road to the Missouri River, to construct a branch road to some point in Monona County, in or at Onawa City, and to aid in the construction of such branch the same amount of lands per mile are hereby granted as for the main line, and the same shall be reserved and certified in the same manner; said lands to be selected from any of the unappropriated lands, as herein before described, within twenty miles of said main line and branch. And said company shall file with the Secretary of the Interior a map of the location of the said branch; and provided further, that the lands hereby granted to aid in the construction of the connecting branch aforesaid shall not vest in said company, nor be encumbered or disposed of except in the following manner: When the governor of the State of Iowa shall certify to the Secretary of the Interior that the said company has completed in good running order a section of twenty consecutive miles of the main line of said road west of Nevada, then the Secretary shall convey to said company one-third, and no more, of the lands granted for said connecting branch; and when said company shall complete an additional section of twenty consecutive miles, and furnish the Secretary of the Interior with proof as aforesaid, then the said Secretary may convey to the said company another third of the lands granted for said connecting branch; and when said company shall complete an additional section of twenty miles, making in all sixty miles west of Nevada, the Secretary, upon proof furnished as aforesaid, may convey to the said company the remainder of said lands to aid in the construction of said connecting branch; provided, however, that no lands shall be conveyed to said company on account of said connecting branch road until the governor of the State of Iowa shall certify to the Secretary of the Interior that the same shall have been completed as a first-class railroad. And no land shall be conveyed to said company situate and lying within fifteen miles of the original line of the Mississippi and Missouri Railroad, as laid down on a map on file in the General Land Office; provided further, that it shall be the duty of the Secretary of the Interior, and he is hereby required, to reserve a quantity of land embraced in the grant described in this section sufficient, in the opinion of the governor of Iowa, to secure the construction of a branch road from the town of Lyons, in the State of Iowa, so as to connect with the main line in or west of the town of Clinton, in said State, until the governor of said State shall certify that said branch railroad is completed according to the requirements of the laws of said State; provided further, that nothing herein contained shall be so construed as to release said company from its obligation to complete the said main line within the time mentioned in the original grant; provided further, that nothing in this act shall be construed to interfere with or in any manner impair any rights acquired by any railroad company named in the act to which this is an amendment, or the rights of any corporation, person or persons, acquired through any such company, nor shall it be construed to impair any vested right of property, but such rights are

hereby reserved and confirmed; provided, however, that no lands shall be conveyed to any company or party whatsoever, under the provisions of this act and the act amended by this act, which have been settled upon and improved in good faith by a bona fide inhabitant, under color of title derived from the United States or from the State of Iowa adverse to the grant made by this act or the act to which this act is an amendment. But each of said companies may select an equal quantity of public lands as described in this act within the distance of twenty miles of the line of each of said roads in lieu of lands thus settled upon and improved by bona fide inhabitants in good faith under color of title as aforesaid.

33 SEC. 5. And be it further enacted, That the Mississippi and Missouri Railroad Company shall have the right to transfer and assign all or any part of the grant hereby made to said company to any other company or person or persons if, in the opinion of said company, the construction of the said railr'ad across the State of Iowa will be thereby sooner and more satisfactorily completed; but such assignee shall not in any case be released from the liabilities and conditions accompanying this grant, nor acquire perfect title in any other manner than the same would have been acquired by the grantee herein named; provided, that said transfer and assignment shall first be authorized by the governor of the State of Iowa.

SEC. 6. And be it further enacted, That the Dubuque and Sioux City Railroad Company may so far change their line between Fort Dodge and Sioux City as to secure the best route between those points; said change shall not impair the right to nor change the location of their present land grant. A map of the change shall be filed with the Commissioner of the General Land Office within one year after the passage of this act.

SEC. 7. And be it further enacted, That all the conditions and limitations contained in the act to which this is an amendment, and not expressly changed by this act, shall attach to and run with the grants made by this act, except as the said conditions and limitations have been modified and may hereafter be modified by the general assembly of the State of Iowa.

SEC. 8. And be it further enacted, That no lands hereby granted shall be certified to either of said companies until the governor of the State of Iowa shall certify to the Secretary of the Interior that the said company has completed, ready for the rolling stock, within one year from the first day of July next, a section of not less than twenty miles from the present terminus of the completed portion of said railroad, and in each year thereafter an additional section of twenty miles; but the number of sections per mile originally authorized shall be certified to each company, upon proof as aforesaid of the completion of the additional sections of the road as aforesaid; and upon the failure of either company to complete either section as aforesaid to be annually built the portion of the land remaining uncertified shall become subject to the control and disposition of the legislature of the State of Iowa, to aid in the completion of such road.

34 SEC. 9. And *he* it further enacted, That all lands hereafter certified to either of the land-grant railroads in said State, and lying opposite any completed section of such road, shall be offered for sale by the company to which they shall be certified within three years from the completion of such section if then certified; and if not, then within three years from the date of such certificate, at reasonable prices;

and if not all sold within that period, then during the fourth year all such lands remaining unsold shall be exposed to public sale, after previous notice posted at the county seat of the county in which such lands shall be situated, to the highest bidder, and in tracts not exceeding one hundred and sixty acres each.

Approved June 2, 1864.

(Tr. pp. 259–272.)

Plaintiff offers in evidence a certified copy of the map showing the definite location of the Iowa Central Air Line Railroad, filed on the 18th day of June, 1857, with certificate of engineer attached—attached to transcript as Exhibit No. 1, and hereby referred to. Said map, from the nature of it, it is impossible and impracticable to set out in abstract.

Certified copy of letter from Bernhart Henn, agent for the selection of lands, to Thos. A. Hendricks, Commissioner of General Land Office, dated Sept. 4, 1856, attached to transcript, pp. 273–276, marked "Exhibit 2," viz:

CHICAGO, ILL., *Sept.* 4, 1856.

SIR: For and in behalf of the State of Iowa, and the four several railroad companies which by the act of the legislative assembly of said State of Iowa July 14, 1856, were constituted the beneficiaries of the grants of land made to said State by the act of Congress approved May 15, 1856, and as the legally appointed agent of said State and of said companies, I hereby select the unsold land in the sections and parts of sections designated by odd numbers between the six and fifteen mile limits on each of the roads, to make up the deficiency caused in the odd-numbered sections within the six-mile limits, by sales or valid pre-emption rights existing prior to the grants made to said State by the act of Congress.

Very respectfully, your obedient servant,

BERNHART HENN, *Agent, &c.*

Hon. THOS. A. HENDRICKS,

Commissioner General Land Office, Washington, D. C.

(Tr. pp. 273–276.)

35 Certified copy of letter from Thos. A. Hendricks, Commissioner of General Land Office, to Bernhart Henn, dated Jan. 19, 1857, attached to transcript as Exhibit 3.

GENERAL LAND OFFICE, *Jan.* 19, 1857.

Hon. B. HENN,

Agent State of Iowa and Iowa R. R. Companies, present:

SIR: I have fully examined and considered your communication of the 14th inst. on behalf of the Iowa railroad companies, and am unable to agree with you in the conclusion at which you have arrived.

The grant to the State of Iowa. It is to aid in the construction of railroads within her limits. That the grant would fall under the control of corporations created by the State of Iowa must have been anticipated by Congress.

I am, very respectfully, your obedient servant,

THOS. A. HENDRICKS,

Commissioner.

(Tr. pp. 277.)

Certified copy of letter from Thos. A. Hendricks, Commissioner, to register and receiver of land offices at Dubuque, Chariton, &c., dated Jan. 28, 1858.

(Attached to tr. as Exhibit 4.)

GENERAL LAND OFFICE, *Jan.* 28, 1858.

REGISTER and RECEIVER LAND OFFICE,
Dubuque, Chariton, Fort Des Moines,
Council Bluffs, Sioux City, and Fort Dodge:

GENTLEMEN: For your guidance in disposing of the public lands, I have this day transmitted you, by mail, a diagram of the district of lands subject to sale at your office, upon which has been traced the lines of route and the lines of the six and fifteen mile limits, within the said district, of the railroad, to aid in the construction of which a grant of lands was made to the State of Iowa by act of Congress approved May 15, 1856.

As all the vacant tracts in the odd-numbered sections, outside of the six and within the fifteen mile limits, have been selected by the agent of the State in lieu of the lands sold and pre-empted in the alternate sections granted by the act above mentioned, such tracts are not restored to market by notice No. 591, copy herewith, and you will, of course, continue to reserve them as heretofore from sale or location for any purpose whatever.

Respectfully, your obedient servant,

THOS. A. HENDRICKS,
Commissioner.

(Tr., pp. 279–282.)

36 Certified copies of order from Thos. A. Hendricks to register and receiver at Dubuque, Sioux City, Chariton, Fort Des Moines, and Council Bluffs, dated May 10, 1856, attached to transcript as Exhibit 5, each of which are as follows:

GENERAL LAND OFFICE, *May* 10, 1856.

REGISTER and RECEIVER:

You will suspend from sale or location all the lands in your district until further orders. Acknowledge the receipt of this dispatch by telegraph and mail.

THOS. A. HENDRICKS,
Commissioner.

(Tr. pp. 283–285.)

Certified copy of order from Thos. A. Hendricks, Commissioner General Land Office, to register and receiver at Fort Dodge, Iowa, May 10, 1856, attached to transcript as Exhibit 5, as follows:

GENERAL LAND OFFICE, *May* 10, 1856.

REGISTER and RECEIVER,
Fort Dodge, Iowa:

You will suspend from sale or location all the lands in your district situated south of the line which divides townships ninety-two and ninety-

three, until further orders. Acknowledge the receipt of this dispatch by telegraph and mail.

THOS. A. HENDRICKS,
Commissioner.

(Tr. p. 285.)

Certified copy of letter from Thos. A. Hendricks, Commissioner, to register and receiver at Sioux City, Iowa, dated May 15, 1856, attached to transcript as Exhibit 6, viz:

GENERAL LAND OFFICE, *May* 15, 1856.

REGISTER and RECEIVER,
Sioux City, Iowa:

GENTLEMEN: By my telegraphic dispatch of the 10th inst. you were directed to suspend from sale or location all the lands in your district situated south of the line dividing townships 91 and 92, until further orders. The object of this withdrawal was to protect from sale the lands granted to the State of Iowa for four railroads running from the Mississippi River to the Missouri River, by a bill which has just passed both Houses of Congress.

Said bill having this day been approved by the President, has become a law, and you will continue to withhold the lands from sale or location until otherwise directed.

It is designed to adjust the several grants with as little delay
37 as practicable in order that lands remaining to the United States may be restored to market.

I am, very respectfully, your obedient servant,

THOS. A. HENDRICKS,
Commissioner.

(Tr., pp. 287–'8.)

Certified copy of letter from Commissioner General Land Office to B. Henn, dated Dec. 23, 1856 (attached to transcript as Exhibit 7), viz:

GENERAL LAND OFFICE, *December* 23, 1856.

To Hon. B. HENN,
Agent of the State of Iowa, present:

SIR: In compliance with your request of the 17th inst., I herewith transmit copies of the papers relating to the Des Moines River grants in Iowa, as per schedule which accompanied your letter.

I am, very respectfully, your obedient servant,

THOS. A. HENDRICKS,
Commissioner.

(Tr., p. 289.)

Certified copy of letter from Commissioner to Bernhart Henn, dated Jan. 19, 1857 (attached to transcript as Exhibit 8), viz:

GENERAL LAND OFFICE, *Jan.* 19, 1857.

Hon. B. HENN,
Agent of the State of Iowa
and the Iowa Railroad Companies, present:

SIR: I have carefully examined and considered your communication of

the 14th inst. on behalf of the Iowa railroad companies, and am unable to agree with you in the conclusion at which you have arrived.

The grant is to the State of Iowa. It is to aid in the construction of railroads within her limits. That the grant would fall under the control of corporations created by the State of Iowa must have been anticipated by Congress.

THOS. A. HENDRICKS,
Commissioner.

(Tr., pp. 290–'5.)

Certified copy of letter from Commissioner to B. Henn, Jan. 20, 1857 (attached to transcript as Exhibit 9), viz:

GENERAL LAND OFFICE, *January* 20, 1857.

Hon. B. HENN,
Agent, &c., present:

Your communication of the 26th of last September, in behalf of the State of Iowa and the railroad companies of that State interested in the grant of May 15, 1856, was understood to be a statement. * * *

38

Very respectfully, your obedient servant,

THOS. A. HENDRICKS,
Commissioner.

(Tr., pp. 297.)

Certified copy of letter from Commissioner to B. Henn, dated November 24, 1858 (attached to transcript as Exhibit 10), viz:

GENERAL LAND OFFICE, *November* 24, 1858.

BERNHART HENN,
Agent of the State, &c., Fairfield, Iowa:

SIR: Pursuant to the request of W. T. Steiger, I have to state that the certificate by the governor of the State of Iowa of the construction of forty miles west from the city of Dubuque of the Dubuque and Pacific Railroad, accompanied by a map exhibiting the same, was received and placed upon the files of this office on the 8th of May, 1858.

Respectfully, your obedient servant,

THOS. A. HENDRICKS,
Commissioner.

(Tr., p. 299.)

Certified copy of letter from Commissioner to B. Henn, dated March 4, 1859 (attached to transcript as Exhibit 11), viz:

GENERAL LAND OFFICE, *March* 4, 1859.

Hon. B. HENN,
Agent of the Iowa Railroad Cos., Fairfield:

SIR: Herewith I transmit certified copies of seventeen lists approved by the Secretary of the Interior on the 27th of December, 1858. * * *

IOWA CENTRAL AIR LINE RAILROAD.

	6-mile.	15-mile.	Total.
Dubuque district	1,809.74	3,998.57	5,808.31
Fort Dodge district	576.00	59,072.60	59,648.60
Council Bluffs district	100,588.07	193,377.59	293,965.66
Sioux City district	132,911.18	137,641.84	270,553.02
	235,884.99	394,090.60	629,975.59

* * *

Very respectfully, your obedient servant,

JOS. S. WILSON,
Acting Commissioner.

(Tr., pp. 296–298.)

Certified letter from Commissioner to B. Henn, dated Oct. 28, 1859 (attached to transcript as Exhibit 12), viz:

39 GENERAL LAND OFFICE, *Oct.* 28, 1859.

Hon. B. HENN,
Agent Iowa Central Air Line Railroad, Fairfield, Iowa:

"SIR: Herewith I transmit certified copies of two lists of lands, approved by the Secretary of the Interior on the 24th inst., inuring to the State of Iowa under the act of Congress approved May 15, 1856.

These lists comprise the sections in place * * within the fifteen-mile limits of the Iowa Central Air Line Railroad. * * *

With respect, your obedient servant,

J. A. SMITH,
Commissioner.

(Tr. pp. 303–'5.)

Certified copy of letter from Commissioner to register and receiver at Council Bluffs, Sioux City, &c., dated June 16, 1864 (attached to transcript as Exhibit 13), viz:

GENERAL LAND OFFICE, *June* 16, 1864.

REGISTER and RECEIVER,
Council Bluffs, Iowa:

GENTLEMEN: The Secretary of the Interior, at the request of the Iowa delegation in Congress, has directed that all the public lands in said State be withdrawn from entry and location by individuals, with a view to facilitate the adjustment of the several grants of lands recently made by Congress to the State of Iowa.

You are therefore hereby instructed to withdraw from sale, location, homestead entry, or pre-emption claim all the public lands in your district now subject to sale from the date of the receipt of this letter, excepting that you will allow the completion of the selections by the State under the grant for agricultural colleges.

The receipt of this you will promptly acknowledge, stating the date at

which it may reach you, thus interdicting thereafter the disposal of any tract, with the exception mentioned.

Very respectfully,

J. M. EDMUNDS,
Commissioner.

Copy of this sent to land office at Sioux City, Council Bluffs, Fort Dodge, and Des Moines.

(Tr. pp. 307–311.)

Certified copy of letter from Commissioner to Secretary of Interior, dated June 25, 1864 (attached to transcript as Exhibit 14), viz:

40

DEPARTMENT OF INTERIOR,
GENERAL LAND OFFICE, *June* 25, 1864.

Hon. J. P. USHER,
Secretary of Interior:

SIR: I have the honor to acknowledge the receipt of a letter from Hon. J. W. Grimes and Hon. James Harlan, which was referred by you to this office the 23d inst. for report, and in reply thereto state that after a careful reading of the law referred to by those gentlemen, approved June 2, 1864, amendatory to the act entitled "An act making a grant of land to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," approved May 15, 1856, I am satisfied that it operates upon all public lands belonging to the United States at the date of said enactment and lying within the prescribed limits of the several lines of road mentioned, saving rights of prior inception, consequently not only takes hold of the odd but the even numbered sections also.

J. M. EDMUNDS,
Commissioner.

(Tr. pp. 312–316.)

Certified copy of letter from Wm. T. Steiger to Commissioner, dated May 12, 1865 (attached to transcript as Exhibit 15), viz:

WASHINGTON, *May* 12, 1865.

Hon. JOS. S. WILSON,
Acting Commissioner General Land Office:

SIR: I have the honor to enclose herewith a joint communication, bearing date the 8th inst., just received from W. W. Walker, esq., vice-president, and Hon. Oake Ames, and John I. Blair, esq., agents of the Cedar Rapids and Missouri River Railroad Company, of Iowa, on the subject of alleged homestead and pre-emption settlements permitted on lands already vested by law in said road under the grants of Congress, as we hope to be able to show to the satisfaction of the Department.

In the mean time, to prevent much embarrassment, I respectfully request—

1. That instructions may be immediately given to the local land offices, forbidding the allowance of homestead and pre-emption entries on the even-numbered sections within fifteen miles of the line of road as fixed

and established under the act of May 15, 1856, or upon any of the sections (even or odd) within the additional five miles on each side thereof granted by act of the 2d of June, 1864; and—

41 2. That all homestead and pre-emption entries and locations of the above-mentioned lands settled on after 2d June, 1864 (the date of the new grant) may be suspended, with a view to their examination and cancellation. As the agent of the Burlington and Missouri River Railroad Company I beg leave to prefer similar requests relative to such settlements and entries within the adjusted limits of their grants.

W. T. STEIGER, *Agent, &c.*

(Tr. pp. 317–323.)

Certified copy of letter from Commissioner to James Harlan, dated May 26, 1865 (attached to transcript as Exhibit 16), viz:

DEPARTMENT OF INTERIOR,
GENERAL LAND OFFICE, *May* 26, 1865.

Hon. JAMES HARLAN,
Secretary of Interior:

SIR: I have the honor to enclose herewith a letter from Wm. T. Steiger, agent, &c., accompanied by a letter from W. W. Walker to him, on the subject of vacant lands within the 15 and 20 mile limits of certain railroad grants in Iowa, and respectfully request instructions as to the order Mr. Steiger requests this office to make in reference to said lands.

J. M. EDMUNDS,
Commissioner.

(Tr. pp. 324–328.)

Certified copy of letter from Commissioner to James Harlan, Secretary of Interior, dated May 30, 1865 (attached to Burdette letter as Exhibit K), which Burdette letter is introduced in evidence by stipulation hereinafter referred to.

Said Exhibit K is as follows:

DEPARTMENT OF INTERIOR,
GENERAL LAND OFFICE, *May* 30, 1865.

Hon. JAMES HARLAN,
Secretary of Interior:

SIR: Your letter of the 27th inst. is received, requesting a report from this office as to the action taken respecting the land grants referred to in my letter of the 26th inst., under act of 2d June, 1864, and in compliance therewith I have the honor to submit the following:

Shortly after the passage of the act of June 2, 1864, amending "An act making a grant of land to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," approved

42 May 15, 1856, at the request of the delegation in Congress from Iowa this office dispatched instructions to the several land offices in that State, June 16, 1864, by direction of the Secretary of the Interior, to withdraw from market all the vacant public lands until the several grants under said act could be adjusted.

2. Those instructions were subsequently modified so as to allow the State to complete the selections under the agricultural act, to permit several counties to locate swamp indemnity, and also to allow homestead and pre-emption entries.

3. Under date of 25th June, 1864, this office expressed to the Hon. Secretary of the Interior its judgment that the act of June 2, 1864, "operates upon all public lands belonging to the United States at the date of said enactment, and lying within the prescribed limits of the several lines of road mentioned, saving rights of prior inception; consequently not only takes hold of the old but the even numbered sections also."

In view of that opinion, this office can see no objection to compliance with the request of Mr. Steiger, as stated in his letter referred to you with mine of the 26th inst.

In this connection it is deemed proper to refer to letters herewith from the register and receiver at Fort Dodge and Hon. A. W. Hubbard upon the subject of restoring the public lands in Iowa to market, these letters having been referred to this office by Geo. C. Whiting, acting chief clerk, the 18th and 19th inst.

It will be seen from the aforesaid instructions of June 16, 1864, to the land offices in Iowa, that no vacant public lands in the State are now subject to ordinary private sale or location; and as the several railroad interests are considered fully protected by law, I can see no advantage to be gained, either by the State or the General Government, in continuing to withhold these lands from market, but, on the contrary, think that both interests would be promoted by their restoration to sale as requested in the letter referred to, so as not to interfere with the grants under acts of June 2 and May 12, 1864.

J. M. EDMUNDS,
Commissioner.

(Tr., pp. 372.)

Certified copy of letter from Secretary of Interior to Commissioner
43 Edmunds, dated June 2, 1865 (attached to Burdette letter as Exhibit L), which Burdette letter is hereinafter referred to.

Said Exhibit L is as follows:

DEPARTMENT OF INTERIOR,
Washington, D. C., June 2, 1865.

SIR: I herewith return your letters of 2d April and 2d May last, from the register and receiver at Fort Dodge, Iowa, and the Hon. A. W. Hubbard, respectively, recommending the restoration to market of certain lands in Iowa, and to inform you that the views expressed in your communication in relation thereto, dated the 30th ultimo, are approved, and you are requested to give effect to them.

JAMES HARLAN,
Secretary.

(Tr., pp. 372–373.)

Certified copy of letter from Commissioner to register and receiver at Council Bluff, Sioux City, &c., dated June 7, 1865 (attached to transcript as Exhibit 17), viz:

DEPARTMENT OF THE INTERIOR,
June 7, 1865.

REGISTER and RECEIVER,
Council Bluffs, I'wa :

GENTLEMEN: On the receipt hereof you will allow no entries for homesteads, pre-emptions, or locations, for any purpose, in your district on the even-numbered sections lying within the 15-mile limits as fixed under the act of the 15th of May, 1856, and shown on the diagram heretofore furnished your office, nor upon any of the sections, odd or even, within the additional 5 miles or 20 mile limits on each side thereof, granted by act of June 2, 1864, of the following railroads, viz, The Burlington and Missouri River Railroad, The Mississippi and Missouri River Railroad, The Cedar Rapids and Missouri River Railroad.

In the mean time any entries or locations which have been permitted by you under existing instructions subsequent to the 2d of June, 1864, except those of prior inception, will be held in suspense for investigation and adjustment at this office.

You will please acknowledge receipt of this letter.

J. M. EDMU*F*DS,
Commissioner.

(Copy of above letter also sent to register and receiver at Des Moines, Fort Dodge, and Sioux City. Tr., pp. 329–333.)

Certified copy of letter from Edmunds, Commissioner, to register and receiver at Council Bluffs, dated July 6, 1866 (attached to transcript as Exhibit 18), viz:

44 DEPARTMENT OF INTERIOR,
GENERAL LAND OFFICE, *July* 6, 1866.

GENTLEMEN: I herewith enclose two descriptive lists of lands in your district heretofore withheld from ordinary private entry for the adjustment of land grants to the State of Iowa for railroad purposes; the one list embracing 18,821.43 acres, held at the double minimum price of $2.50 per acre, the other 236,598 at the ordinary minimum of $1.25.

I also enclose herewith a copy of notice No. 711, of yesterday's date, under which these lands will again become subject to ordinary private entry on Monday, the 1st day of October, 1866, and the lands similarly situated in the other districts of the State at dates therein specified.

You will retain said lists in your office, open to the inspection of parties desiring to purchase. The enclosed notice you will cause to be published immediately in some newspapers of general circulation in your district, the publication to be continued at least once a week until the 29th of October next, the latest date fixed in the notice for the lands in any of the districts to be restored to market.

Printed copies of the notice will be transmitted to you in a few days for distribution.

J. M. EDMUNDS,
Commissioner.

REGISTER and RECIVER,
Council Bluffs, Iowa.

(Tr., pp. 334, '5.)

Certified copy of letter from Commissioner to register, Sioux City, dated Aug. 23, 1866 (attached to transcript as Exhibit 19), viz:

DEPARTMENT OF INTERIOR,
GENERAL LAND OFFICE, *Aug.* 23, 1866.

REGISTER LAND OFFICE,
Sioux City, Iowa:

SIR: In reply to your letters of the 14th inst., I have to state that the even-numbered sections within the 5, 15, and 20 mile limits of the Cedar Rapids and Missouri River Railroad are not subject to homestead or pre-emption, whilst all the lands designated in the list of vacant lands sent you are subject to both of said laws.

JOS. S. WILSON,
Acting Commissioner.

(Tr., pp. 336–340.)

45 Certified copy of letter from Commissione' to register and receiver, Council Bluffs, Iowa, dated September 20, 1866 (attached to transcript as Exhibit 20), viz:

DEPARTMENT OF INTERIOR,
GENERAL LAND OFFICE, *September* 20, 1866.

GENTLEMEN: We have a letter from Isaac Cook, commissioner for the Cedar Rapids and Missouri River Railroad, representing that claims are being allowed to lands granted to the State for the benefit of said road by acts of 1856, and that parties, in virtue of such claims, are entering upon the land and despoiling it of timber, greatly to the damage of the interests of the road, and requesting instructions to be given to the proper officers on the subject.

You are therefore advised that all claims having inception subsequent to the location of the line of road, when the right inures to the State, should be rejected, and if any such have been allowed you are instructed to notify the parties that they will be cancelled.

Where parties claim the right of pre-emption in virtue of actual settlement and cultivation prior to the grant to the State you will notify the State authorities or representatives of the road as to the claim, and of the time and place of taking proof in support of such claim.

The act of June 2, 1864, grants to the several roads therein mentioned, in the State of Iowa, all the vacent public lands—odd and even numbered sections—within the limits of each 20 miles; hence no homestead entry or pre-emption claim which was initiated after the passage of said law will be approved. You will therefore disallow all such claims, and notify parties who have been permitted to make them heretofore that said claims will be cancelled by this office.

You will please promptly report particulars in each and all cases in which you may take action under these instructions.

JOS. S. WILSON,
Commissioner.

REGISTER and RECEIVER,
Council Bluffs, Iowa.

(Tr., pp. 341–344.)

Certified copy of letter from Jos. S. Wilson, Commissioner, to register and receiver at Council Bluffs, dated August 5, 1867 (attached to transcript as Exhibit 21), viz:

46 DEPARTMENT OF INTERIOR,
GENERAL LAND OFFICE, *August* 5, 1867.

GENTLEMEN: In reference to the lands in your district which were withdrawn from ordinary private entry for railroad purposes the 23d of June, 1864, ordered to be restored thereto on the 1st of October, 1866, per printed notice 711, and the restoration of which was postponed by order of Secretary of the Interior for one year from the 5th of July, 1866, the date of the notice as per our letter to your office of the 21st of September, 1866, I have to state that the period of the postponement expired on the 5th ultimo, but the lands will not be subject to ordinary private entry until the usual thirty days' public notice thereof shall be given by advertisement in some newspaper of general circulation in your district. This you will do without delay, and forward a copy of the newspaper containing the advertisement to this office.

J. S. WILSON,
Commissioner.

REGISTER and RECEIVER,
Council Bluffs, Iowa.

(Tr., pp. 345, 346.)

Certified copy of letter from Commissioner to register and receiver at Council Bluffs, dated November 11, 1867 (attached to transcript as Exhibit 22), viz:

DEPARTMENT OF INTERIOR,
GENERAL LAND OFFICE, *November* 11, 1867.

REGISTER and RECEIVER,
Council Bluffs Land Office, Iowa:

GENTLEMEN: Pursuant to your request of the 2d inst. I enclose herewith a copy of two lists of vacant lands which you proposed this day to restore to ordinary private entry at $2.50 and $1.25 per acre. As the time for offering has elapsed I have to request that you give at least thirty days' notice, and advise this office to that effect. Said lists are to take the place of the two reported destroyed by fire last June.

JOS. S. WILSON,
Commissioner.

(Tr., pp. 347, 348.)

Certified copy of letter from John I. Blair to Commissioner Wilson, dated December 19, 1867 (attached to transcript as Exhibit 23), viz:

WASHINGTON, *December* 19, 1867.

Hon. JOSEPH WILSON,
Commissioner General Land Office:

SIR: I have the honor to enclose a map showing the western terminus of the Cedar Rapids and Missouri River Railroad, Iowa,

47 which I respectfully request may be attached to the map of definite location heretofore filed.

JOHN I. BLAIR,
Pres't C. R. & M. R. R. Co.

(Please acknowledge, directed to me, Blairstown, N. J.)
(Tr., pp. 322.)

Certified copy of the final certificate of governor of Iowa as to completion of C. R. & M. R. R. R., dated July 2, 1867 (attached to transcript as Exhibit 24), viz:

STATE OF IOWA,
EXECUTIVE DEPARTMENT.

This certifies, in accordance with the act of Congress approved June 2, 1864, that the Cedar Rapids and Missouri River Railroad Company, a company organized under the laws of Iowa, has completed and ready for the rolling stock, prior to the 1st day of July, 1865, a section of more than twenty miles of said company's railroad, from the point which was the terminus of said railroad, on the second day of June, 1864; and also an additional section of more than twenty miles, between the first day of July, 1865, and July, 1866; and also another additional section of more than twenty miles, between the 1st day of July, 1866, and July, 1867, as required by act of Congress, approved June 2, 1864. It is further stipulated that in addition to the above the said railroad has completed and put in operation seven additional sections of twenty miles each, and eleven miles and six-tenths of a mile of the next section of twenty miles, thus making in all thirteen consecutive sections of twenty miles each, and eleven and six-tenths of a mile over and beyond said thirteen sections, the same being altogether two hundred and seventy-one and six-tenths miles.

The said railroad is built as near as practicable to the forty-second parallel of latitude across the State of Iowa to the Missouri River, on a gauge of four feet eight and one-half inches, of a good quality of iron and approved pattern, with 2,640 ties to each mile, and in all respects equal to the average of other first-class Western railroads, as required by and in accordance with the acts of Congress relating thereto approved May 15, 1856, and June 2, 1864, and the act of the general assembly of the State of Iowa approved March 26, 1860.

48 In testimony whereof I have hereunto affixed my name and caused to be affixed the great seal of the State of Iowa.

Done at Des Moines, 2d day of July, 1867, etc.

[SEAL.]

WM. STONE,
Governor of Iowa.

By the Governor,
ED. WRIGHT, *Secretary of State.*

(Tr., pp. 349–357.)

Certificate of the governor of Iowa with reference to completion of Lyons Plug railroad, dated Oct. 21, 1870 (attached to transcript as Exhibit 25), viz.:

STATE OF IOWA,
EXECUTIVE DEPARTMENT.

To the Hon. J. D. COX,
Secretary of Interior, Washington, D. C.:

I, Samuel Merrill, governor of the State of Iowa, do hereby certify that the Cedar Rapids and Missouri River Railroad, a railroad corporation organized and existing under the laws of the State of Iowa, has built a branch railroad from the town of Lyons, in the State of Iowa, to connect with the main line of the Chicago, Iowa and Nebraska Railroad in the town of Clinton, in said State, and that the said branch is built from Pearl street, in Lyons City aforesaid, to a point of intersection with the said Chicago, Iowa and Nebraska Railroad, within the corporate limits of the said city of Clinton, with all the necessary switches and side tracks that the business of the said town of Lyons requires; that the same is of a gauge of four feet eight and one-half inches, being the same as the Chicago, Iowa and Nebraska Railroad, and in all respects of equal quality with the last-mentioned railroad; that the said branch railroad was built and constructed by the said Cedar Rapids and Missouri River Railroad Company in the years 1867 and 1868, and that the same is run and operated by the Chicago and Northwestern Railway Company, the lessee of the Chicago, Iowa and Nebraska Railroad, in close connection with the trains on the said last-mentioned railroad, and that the said branch railroad has been built and is now operated in conformity with the laws of the United States and of the State of Iowa relating thereto.

In testimony whereof I have hereunto set my hand and caused to be affixed the great seal of the State of Iowa.

Executed in duplicate, of which one copy is delivered to the said C. R. & Mo. R. R. R.

Done at Des Moines, in the State of Iowa, on the 21st day of October, 1870.

[SEAL.] SAMUEL MERRILL.

By the governor:
ED. WRIGHT, *Secretary of State.*

(Tr., pp. 358–360.)

49 Plaintiff also introduces in evidence a map of the Cedar Rapids and Missouri River Railroad, with certificate indorsed thereon, filed in General Land Office July 11, 1865 (attached to transcript as Exhibit 26), and which from its nature it is impossible to set out in abstract, and is hereby referred as part of transcript.

Also, map with certificates thereon, showing the line and limits of the Cedar Rapids and Missouri River Railroad, authorized by act of May 15, 1856, and also the amended line and limits authorized by act of June 2, 1864 (attached to transcript as Exhibit 27), which map, from its nature it is impossible to set out in abstract, and the transcript is hereby referred to.

Certified copy of abstract of declaratory statements filed in the land office at Council Bluffs, Iowa, upon the list of lands described therein, and certificate that there were no declaratory statements filed upon certain other lands embraced in said lists, certified to by F. G. Clark, register United States land office at Des Moines, Iowa, under date Oct. 2, 1877 (attached to transcript as Exhibit 28), viz:

Abstract of declaratory statements filed in the land office at Council Bluffs, Iowa, during the month of June, 1865, on lands which have been offered at public sale under the President's proclamation.

No. of statement filed.	Date of settlement.	Date of filing.	Name.	Description.	Sec.	Tp.	Rng.
	1865.	1865.					
5461	June 14	June 16	D. A. Wooster	W. ½ NE. ¼	6	85	42
	1871.	1871.					
5502	April 17	May 13	Francis Smith	N. ½ NW. ¼	6	85	42

UNITED STATES LAND OFFICE,
Des Moines, Iowa.

I, F. G. Clark, register of the United States land office at Des Moines, State of Iowa, hereby certify the above as a true and correct copy of the book of declaratory statements, a record kept on file in this office, so far as relates to Nos. 5461 and 5502, as having been filed at the late Council Bluffs United States land office, as appears from the records on file in this office.

And I further certify I have examined, carefully and critically, said Council Bluffs declaratory statement records from the 1st day of April, 1858, to the 30th day of July, 1873 (the latter date being the date of the discontinuance of the Council Bluffs land office), and from the 1st day of July, 1873, to the 1st day of October, 1877, the records of this
50 office, and I am unable to find that any declaratory statement has been filed on any of the following-described lands during the times above specified:

Descriptionn.	Sec.	Tw'p.	Range.
N. ½ SE. ¼	6	85	42
NE. ¼ NE. ¼	6	85	42
SW. ¼ NW. ¼ and NW. ¼ SW. ¼	6	85	42
E. ½ NE. ¼	8	85	42
E. ½ SW. ¼	8	85	42
N. ½ NE. ¼	10	85	42
E. ½ SW. ¼	12	85	43
SW. ¼ NE. ¼ and SE. ¼ NW. ¼	6	85	43
S. ½ NW. ¼	4	84	44
SE. ¼ NW. ¼ and SW. ¼ NE. ¼	24	85	44
S. ½ SW. ¼	6	85	45
S. ½ NW. ¼	10	84	46
N. ½ NW. ¼	28	84	46
N. ½ NW. ¼	20	84	46
W. ½ NE. ¼	20	84	46
E. ½ NE. ¼	20	84	46

In testimony whereof I have hereunto set my name the 2d day of October, 1877.

F. G. CLARK, *Register.*

(Tr., pp. 361–2.)

The plaintiff introduced the Burdette letter, with exhibits thereto attached, by stipulation hereafter referred to, which letter is as follows:

DEPARTMENT OF INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., Jan. 19, 1876.

SIR: I am in receipt of your letter of the 28th ult., relative to the Cedar Rapids and Missouri River Railroad Company, its road, and the land granted to or for and received by said company.

By the act of Congress approved May 15, 1856 (Statute' at Large, vol. 11, page 9), lands were granted to the State of Iowa for the purpose of aiding in the construction of certain railroads, among others one "from Lyons City northwesterly to a point of intersection with the main line of the Iowa Central Air Line Railroad, near Maquoketa; thence along said line running as near as practicable to the 42d parallel across said State to the Missouri River."

There is on file in this office a letter dated November 19, 1862, from Samuel J. Kirkwood, governor of Iowa, giving a brief history of the *the* grant of lands to the State in trust. From this letter it appears
51 that the lands were granted by the State to the Iowa Central Air Line Railroad Company July 14, 1856, subject to certain conditions.

On the 1st of December, 1859, no portion of the road had been completed, and the affairs of the company were in a hopeless condition. In the mean time another company, the Chicago, Iowa and Nebraska, had built a road, commencing at Clinton, on the Mississippi River, only two miles from Lyons City, to Cedar Rapids. The legislature of Iowa, by act of March 17, 1860, resumed control of the land, and by act of March 26, 1860, granted the same to the Cedar Rapids and Missouri River Railroad Company, upon certain conditions. At the time of writing the letter, November 19, 1862, Gov. Kirkwood claimed that the company had complied with the conditions of the act. It was the practice of this office and Department to certify the lands granted to the State for railroad purposes by the act of May, 1856, to said State prior to the construction of the road, or any part thereof. This action was in accordance with the opinion of the Attorney-General (Hon. J. Black), dated June 7, 1857, to the effect that the grant to the State vests in said State the title to the lands granted. In accordance with this opinion there were approved to the State of Iowa prior to June 2, 1864, 775,717.81 acres.*

By the 4th section of the act June 2, 1864 (Statute' at Large, vol. 13, p. 96), the Cedar Rapids and Missouri River Railroad Company was permitted to *no*dify or change the uncompleted portion of the line. I will add in this connection that it is the practice of this office to certify to the State, under the act of 1856, the lands in the odd-numbered sections within the old or original 15-mile limits of the road, and to certify to the company under the act of June 2, 1864, the lands in the even sections within the 20-mile limits of the modified line and the 15-mile limits of the original line; also the lands in the odd sections between the 15 and 20 mile limits. I will also add that there is on file in this office a certificate, dated July 2, 1867, signed by W. M. Stone, governor of Iowa, stating that the

* This includes 109,756.85 acres lost by decision of the United States Supreme Court (December term, 1866) in the Des Moines improvement grant, which quantity must be added to the deficiency of land to satisfy the grant for the benefit of the Iowa Central Air Line Railroad Company.

Cedar Rapids and Missouri River Railroad Company had constructed a branch road from Lyons to Clinton, as required by the act of June 2, 1864.

52 It is also understood that the Cedar Rapids and Missouri River Railroad Company is the successor of the Iowa Central Air Line Railroad Company, and the lands certified by this office to the State of Iowa for the latter company are regarded as inuring to the grant for the former company. As before stated, the lands were certified to the State, subject to her disposal, and while it is understood that the Cedar Rapids and Missouri River Railroad Company have only actually built the road west from Cedar Rapids (or from western terminus of line, built prior to 1864), with the exception of the line from Lyons to Clinton, yet it received the benefit of the lands certified to the State east of that point, in accordance with the laws of Iowa. At all events, if such is not the case, this office is not in a position to question the State as to the disposal by her of the lands granted.

With this preliminary statement, and with the aid of the map and copies, with the orders, etc., transmitted, I will endeavor to reply to your questions in detail.

Your first question is:

"What quantity of lands has the Cedar Rapids and Missouri River Railroad Company of Iowa received under the act of 1856, and what quantity under the amendment of June 2, 1864?"

Under the act of 1856, it is estimated that the quantity of lands embraced within the limits of the grant is 1,298,730 acres; of this quantity it is estimated that the company will receive 800,000 acres, of which 782,250 acres have been certified. Under the act of June 2, 1864, it is estimated that the company will receive 356,988 acres, of which 349,683 have been certified.

Your second question is:

"Where does the modified line of said company, under act of June 2, 1864, begin and terminate? How long is it, and how much land has it received therefor?"

The modified line begins at Cedar Rapids, or near there, at the western terminus of the line built prior to 1864, and terminates at Missouri Valley, indicated on the map by the letter D. The certificate of the governor of Iowa states that 271.6 miles of road has been constructed. The company has received 1,131,933 acres.*

53 The lands certified east of Cedar Rapids are included in this quantity. The company was not required by law to file in this office a map of constructed road. The certificate of the governor of Iowa, stating that the road has been constructed, is the authority required for certifying the lands under the act of June 2, 1864. On the map transmitted the original line is marked "Q B," and is colored red; the modified line is marked "C D," and is colored green. This is the line of the general route, but it is also understood to be the line of constructed road. The company has claimed no lands north of the 20-mile limits of the original line (also indicated on the map), as north of said 20-miles' line. On the south the grant is limited by the 15-mile compromise line.

* This includes the 109,756.85 of lost Des Moines land.

Your third question is:

"Where does the 'Onawa Branch' of said company, under the act of 1864, begin and terminate? How long is it, and how much land has it received therefor?"

The act of 1864 would seem to contemplate the construction of a branch from the main line east of Onawa City, and from that point to said city. This line is indicated on the map by the letters "E F." It is alleged that the route was impracticable, and the road was never built. It appears that a road was actually built for the Cedar Rapids and Missouri River Railroad Company on a line indicated on the map "D G," or from Missouri Valley to California Junction. This branch connects with the main line of the Cedar Rapids and Missouri R. R. R. with the S. C. & P. R. R. (the Iowa branch of the Union Pacific Railroad), passing through Onawa City. It is claimed by the company that the consolidation of this branch with the Sioux City and Pacific Railroad, under the State laws, for valuable considerations and inducements, one of which was that the said Sioux City and Pacific Railroad to Onawa City became virtually, by said agreement, an extension of the Cedar Rapids and Missouri River Railroad to Onawa City, was, for all practicable purposes, intended by the act of Congress of June 2, 1864, a compliance with the law requiring said branch to be built. This is called the "Onawa Branch," and is about six miles long. No lands have been certified to it as such branch. The lands within the limits of the same, and also within the limits of the branch, indicated by the letters "E F" (not constructed), are within the limits of the main line, and have been certified, or are subject to certification for said main line.

Your fourth question is:

54 "For how much and what road (other than the 'modified line'), and 'Onawa Branch,' has the company received said lands, and how much land has it received therefor, under the act of 1856, and how much under the amendment of 1864?"

The lands have all been certified for the Iowa Central Air Line Railroad Company, or its successor, the Cedar Rapids and Missouri River Railroad Company, to aid in the construction of the line from Lyons City to the Missouri River, as authorized by the act of May 15, 1856, and June 2, 1864. It has received 782,280 acres under the act of 1856, and 349,683 acres under the act of 1864, as follows:

326,721.71 acres July 18, 1868.
15,684.97 acres April 20, 1869.
906.41 acres September 2, 1872.
480 acres November 14, 1873.
2,218.69 acres July 26, 1874.
3,265.22 acres April 6, 1875.
406 acres November 16, 1875.

These lands were approved by the Secretary of the Interior; about 800 acres were erroneously certified, and should be deducted from the amount given as received by the company.

Your fifth question is:

"Were any lands reserved by the Secretary of the Interior as inuring to said company under the act of 1864; and if so, for what road, at what time, and how much each time?"

The lands were withdrawn by order of the Secretary of Interior June 16, 1864, for railroad purposes. Copy of order enclosed marked "A."

They were not reserved for any company by name, or in any specified quantity, but all the lands within the limits of the grants were withdrawn at date above given.

"Were any lands selected by said company as inuring to it under the grant of 1864; and if so, for what parts of its road, at what times, and how much at each time; and were such selection approved; and if so, by whom?"

The Cedar Rapids and Missouri River Railroad Company has selected lands as inuring to its grant under the act of 1864, but for no particular portion of its road. The lands have been approved at various times,
55 as given above in my reply to your fourth inquiry, and the selections were approved by the Secretary of the Interior.

Your seventh question is:

"Were the pre-emption and homestead entries in the Council Bluff" and Sioux City land districts made after June 2, 1864, and within the limits of said grant, or any of them, allowed under the rulings or construction of Department or Commissioner, and, if so, which of them, and on whose authority was the remainder of them allowed?"

A reference to the copies, orders, correspondents, etc., which I enclosed, will give you the information desired. It will show that the homestead and pre-emption entries allowed after June 2, 1864, were allowed under instructions and orders from this Department and office.

The lands were originally withdrawn June 16, 1864, copy of order enclosed marked "A." In a letter from this office, dated June 25, 1864, copy enclosed marked "B," it was stated that the grant took effect upon all public lands within the limit of the grant.

Under date of August 22, 1864, this office recommended to the Secretary of the Interior that homestead and pre-emption entries be allowed in Council Bluffs and Des Moines districts, copy enclosed marked "C." The Secretary approved of this view in a letter dated August 24, 1864, copy enclosed marked "D," and an order was accordingly issued August 25, 1864, copy enclosed marked "E," allowing such entries.

Under date of 2d May, 1865, Hon. A. W. Hubbard addressed a letter to the Secretary of the Interior, requesting that the lands heretofore withdrawn, except the odd-numbered sections, be restored to market and entry, copy of letter enclosed marked "F."

I enclose a copy of a letter from W. T. Steiger, agent of the Cedar Rapids and Missouri River Railroad Company, dated May 12, 1865, marked "G;" a copy of a letter from this office, dated May 26, 1865, marked "H;" a copy of a letter from this office, dated May 27, 1865, marked "I;" a copy of a letter from this office, dated May 30, 1865, marked "K;" a copy of a letter from the Secretary, dated June 2, 1865, marked "L;" also a copy of the order to the district officers, dated June 7, 1865, marked "M," forbidding all entries upon railroad lands, both within the original 15-mile limits and the 20-mile limits of the modified line.

Certain lands in the Sioux City and Council Bluffs districts were ordered to be restored to market by the instructions of this office,
56 dated July 6, 1866, and a list of said lands was furnished to each office. By order dated August 23, 1866, copy enclosed marked "N," the local officers were instructed not to allow homestead or pre-

emption entries upon the even sections within the 5, 15, and 20 mile limits of the Cedar Rapids and Missouri River Railroad, but to allow such entries upon the lands described in the lists furnished; in such lists were lands outside the 20-mile limits of the modified line, but within the 15-mile limits of the original line. Many entries were allowed upon these lands, and this office has refused to cancel the same where patents have issued. The railroad company has appealed from this decision, and said appeal is now pending before the Secretary of the Interior.

I enclose a copy of the order to the local officers, dated September 20, 1866, marked "O," notifying them that no entries should be allowed upon the lands within the 20-mile limits of the roads mentioned in the act of 1864, and that entries made prior to that date (September 20, 1866), would be cancelled. I also enclose a copy of an order, dated September 21, 1866, marked "P." The Cedar Rapids and Missouri River Railroad Company demand the cancellation of certain entries (among others) made upon lands outside of the 20-mile limits of the modified line, but within the 15-mile limits of the original line. In the view of this office no valid objection can be made to this demand, except where patents have issued. Such cases are considered res adjudicata.

Your eighth question is:

"Were the lands within the limits of said grant, or any of them, withdrawn from homestead and pre-emption after the grant; and, if so, which of them, by whose orders, at what times, and for what reasons?"

A reference to the orders, correspondence, etc., given above, will furnish the information desired on these points.

It was supposed that the grant could be satisfied, but on account of the prior claims of the Des Moines River Improvement Company,* which claim was confirmed by the decision of the United States Supreme Court at the December term, 1866, it was found impossible to satisfy the grant for the Cedar Rapids and Missouri River Railroad Company. This
57 supposition may, in part, account for the orders that were issued restoring certain lands to homestead and pre-emption entry.

Your ninth question is:

"Does the Department hold that the said company is entitled to all lands within the limits of the grant which were vacant June 2, 1864; and, if not, what does it hold in this regard?"

This Department holds that all the lands in the odd and even numbered sections within the limits of the grant, both within the 20-mile limits of the "modified line" and the 15-mile limits of the "original line," to which no valid adverse rights subsisted June 2, 1864, inure to the grant for the benefit of the Cedar Rapids and Missouri River Railroad Company. This view, it appears to me, is the only one that can be taken when the language of the section of the act of June 2, 1864, is carefully considered. It will also be seen from the correspondence that such was the view of this office at the date of the passage of the act.

The lands were restored and entries allowed, many of them in accordance with the orders of this Department, but in view of the fact that the lands had been granted by Congress and that rights had vested, these orders were erroneous and illegal, and much hardship to settlers is the result; a hardship that this office is powerless to relieve.

* Covering 109,756.85 acres, approved for the road, but lost, and must be added to the deficiency of lands to satisfy the grant. (Tr. pp. 363–'5.)

It is proper to add in this connection that by the express terms of the 8th section of the act of June 2, 1864, the control of the lands granted to aid in the construction of the various lines of roads mentioned in the act was vested in the legislature of Iowa, and in case of failure to build the roads or any part thereof no reversion to the United States is provided for, but the title remains in the State for the purposes of act. As before stated, the lands which form the subject of this communication are within the limits of the main line of the Cedar Rapids and Missouri River Railroad, which has been constructed according to law, and therefore inure to the grant and must be certified accordingly.

I have endeavored to answer your questions as fully and completely as the records and the information in the possession of this office will admit.

There have been proceedings in the courts of Iowa and laws enacted by the legislature of that State affecting the grant, especially east of Cedar Rapids, the terms and purport of which are not fully known to
58 this office. The recent decisions of this office and this Department are believed to have been in accordance with the laws of Congress of 1856 and 1864.

Very respectfully,

S. S. BURDETTE,
Commissioner.

A.

Exhibit A, attached and referred to in foregoing letter, dated June 16, 1864, is the same order as that introduced in evidence and herein before set out as Exhibit 13. (Ab., p. 39. Tr., p. 369.)

B.

Exhibit B, attached and referred to in foregoing letter, dated June 25, 1864, is the same letter as that introduced in evidence and herein before set out as Exhibit 14. (Ab., p. 40. Tr., p. 369.)

C.

Exhibit C, attached and referred to in foregoing letter, dated August 22, 1864, is as follows:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *Aug.* 22, 1864.

Hon. J. P. USHER,
Secretary of the Interior:

SIR: I have the honor to enclose to you a letter from Hon. Jno. A. Kasson, asking for a modification of the order heretofore made withdrawing public lands from sale in Iowa, so as to allow pre-emption claims and homestead entries in the Council Bluffs and Des Moines districts, and I respectfully recommend that his request be granted.

I am, very respectfully, your obedient servant,

JOS. S. WILSON,
Acting Commissioner.

(Tr., pp. 369, 370.)

D.

Exhibit D, attached and referred to in the foregoing letter, dated August 24, 1864, is as follows:

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Aug. 24, 1864.

SIR: I have considered your request of the 22d inst. and the accompanying letter of Hon. Jno. A. Kasson and cordially assent to the modification of the order withdrawing the public lands from sale, so that homestead and pre-emption claims shall not be inhibited thereby.

P. P. USHER, *Secretary.*

COMMISSIONER GENERAL LAND OFFICE.

(Tr., p. 370.)

59 E

Exhibit E, attached and referred to in the foregoing letter, dated Aug. 25, 1864:

GENERAL LAND OFFICE, *August* 25, 1864.

REGISTER AND RECEIVER,
Des Moines, Iowa:

GENTLEMEN: In pursuance of instructions from the Hon. Secretary of the Interior, under date of the 24th inst., the order of the 16th of June last, withdrawing from sale the public lands in Iowa, is modified so that entries may be made under the homestead and pre-emption laws as before that order was issued, and you will allow such entries to be made accordingly.

JOS. S. WILSON,
Acting Commissioner.

(Tr., p. 370.)

A similar letter sent to Council Bluffs.

F

Exhibit F, attached and referred to in the foregoing letter, dated May 2, 1865, is as follows:

SIOUX CITY, IOWA, *May* 2, 1865.

HON. JAS. HARLAN,
Secretary of the Interior, Washington, D. C.:

SIR: At the request of the Congressional delegation from this State about one year ago the public lands in this and the Fort Dodge land districts were withdrawn from the market, except for homestead, pre-emption, and swamp-land entries, &c. From my acquaintance with these districts and the circumstances by which they are now surrounded I am satisfied that the reason which induced the delegation to make the application at the time do not now exist.

At this time there seems to be no inducements nor disposition to settle lands for speculation, but there is a demand for actual settlements. This

being the case, there is a general desire on the part of the people that the lands shall be opened for general entry, and I think that the interests of this part of the State require it to be done. I therefore request that the lands heretofore withdrawn may be restored to market, except the odd sections embraced within the railroad grants.

A. W. HUBBARD.

(Tr., p. 370.)

G

Exhibit G, attached and referred to in the foregoing letter, dated May 12, 1865, was introduced in evidence and herein before fully set out as Exhibit 15. (See ab., p. 40. Tr., p. 371.)

60

H

Exhibit H, attached and referred to in the foregoing letter, dated May 26, 1865, was introduced in evidence and herein before fully set out as Exhibit 16. (See ab., p. 41. Tr., p. 371.)

I

Exhibit I, attached and referred to in the foregoing letter, dated May 27, 1865, is as follows:

DEPARTMENT OF INTERIOR,
Washington, D. C., May 27, 1865.

SIR: I have received your communication of yesterday, with inclosures on the subject of the vacant lands within the 15 and 20 mile limits of certain railroad grants in the State of Iowa, and asking instructions in the premises.

With a view to a full understanding of the subject I respectfully request that you will report to me what has been done by your office in relation to said land grants, and what instructions, if any, have been given to the local land offices relative thereto.

JAMES HANLAN,
Secretary.

(Tr., p. 371.)

K

Exhibit K, attached and referred to in the foregoing letter, was introduced in evidence and herein before set out as Exhibit K, dated May 30, 1865. (See ab., pp. 41, 42. Tr., p. 372.)

L

Exhibit L, attached and referred to in the foregoing letter, was introduced in evidence and herein before set out as Exhibit L, dated June 2, 1865. (See ab., pp. 42, 43. Tr., pp. 472–'3.)

M

Exhibit M, attached and referred to in the foregoing letter, was introduced in evidence and herein before set out as Exhibit 17, dated June 7, 1865. (See ab., p. 43. Tr., p. 373.)

N

Exhibit N, attached and referred to in the foregoing letter, was introduced in evidence and herein before set out as Exhibit 19, dated August 23, 1866. (See ab., p. 44. Tr., p. 373.)

O

61 Exhibit O, attached and referred to in the foregoing letter, dated April 20, 1866, is the same as was introduced in evidence and herein before set out as Exhibit 20, dated Sept. 20, 1866. (See ab., p. 45. Tr., p. 373.)

P.

Exhibit P, attached and referred to in the foregoing letter, dated Sept. 21, 1866, is as follows:

DEPARTMENT OF INTERIOR,
GENERAL LAND OFFICE, *Sept.* 21, 1866.

REGISTER AND RECEIVER,
Sioux City, Iowa:

GENTLEMEN: The Secretary of the Interior, under date of the 20th inst., has instructed us to order a suspension of the restoration to market of the public lands in the State of Iowa, for one year from the date of our notice, viz, July 5, 1866. You are therefore directed not to make the offering as per our letter of instructions dated 6th, and notice dated 5th of July, 1866, but to hold the lands, as heretofore, subject to pre-emption and homestead settlement only for the time mentioned, viz, one year from the 5th of July, 1866, unless otherwise ordered. This order is not to be construed as excluding the location of swamp-land indemnity certificates, or selections by the State in satisfaction of the grant under the act of July 2, 1862, for the benefit of agricultural colleges and the mechanic arts, which you will allow as heretofore.

You will please give publicity to this order in some newspaper published in Sioux City.

JOS. S. WILSON,
Commissioner.

(Tr., pp., 373–'4.)

Copies of above letter sent to registers and receivers at Council Bluffs and Fort Dodge.

The foregoing Burdette letter was introduced in evidence by both parties by mutual consent and per stipulation "that the letter of Burdette shall be competent evidence of the matters therein stated and may be introduced by either party. (Tr., p. 141.)

Plaintiff offers in evidence the tesimony of J. Van Deventer, taken by deposition September 19, 1877, viz:

My name is James Van Deventer; reside at Clinton, Iowa; occupation, president Iowa Railroad Land Company.

I have a general knowledge of the lands granted in aid of the Cedar Rapids and Missouri River Railroad, and for some years past have been an officer of that company, and president of the Iowa Railroad
62 Land Company, to which company the Cedar Rapids and Missouri River Railroad Company has sold and conveyed the lands inuring to the grant, so far as they have been certified.

There have been certified to the State of Iowa, under the act of May 15, 1856, in aid of a railroad from Lyon City northwesterly to a point of intersection with the main line of the Iowa Central Air Line Railroad, near Maquoketa, thence on said main line, running as near as practicable to the 42' parallel, across the state of Iowa, to the Missouri River, 784,056.53 acres of land; of these lands 300,022.83 acres were within the 6-mile and 483,033.70 acres within the 15-mile limits; of the aggregate quantity 109,756.85 acres were excluded from the grant by the decision of the United States Supreme Court, by which it was held that the lands selected for the Des Moines improvement grant never belonged to the grant to the railroads, and certification to that extent was void; the residue of the lands, excepting such as had been sold to individuals from time to time, have been sold and conveyed, as above stated, to the Iowa Railroad Land Company.

Under the act of Congress of June 2, 1864, there have been certified to the C. R. & M. R. R. R. 359,097.56 acres, of which 126,148.33 acres are outside the 6-mile limits, but within the 15-mile limits of the original line of the road; and 226,263.02 acres within the 20-mile limit of the modified line, and 6,686.21 acres within the 6-mile limit of the original line.

Ques. State generally what claim has been made by the plaintiff to the lands in Monona County under the acts of Congress aforesaid, and what effort has been made to save such lands to the plaintiff?

Ans. For many years Wm. T. Steiger, a gentleman thoroughly versed in the subject, and possessing great experience in all matters pertaining to land grants, has been at Washington acting as agent for the adjustment of the plaintiff's grant, and every possible effort has been made to procure certificate of the lands inuring to that grant.

The Cedar Rapids and Missouri River Railroad, as constructed, is 271.6 miles long from Cedar Rapids to Council Bluffs, besides the Lyons Plug, so called, which is 2.41 miles long, and the railroad from Clinton to Cedar Rapids is between 81 and 82 miles long. The length of the original main line, located under the act of Congress of May 15, 1856, is about 344.90 miles, as is shown by scaling the line down on its original main line.

63 The Cedar Rapids and Missouri River Railroad was completed in the summer of 1867, and the Lyons Plug, so called, was completed in 1868.

Of the lands certified under the grant some few tracts, not exceeding in all, probably, 1,000 acres, have been relinquished as having been erroneously certified, through mistake in description and other errors. It may,

perhaps, throw light on the matters in controversy to state that plaintiff, for the purpose of certification, claimed its lands under the grant from the east to the west, beginning east and going west for quantity; under the act of 1864, as it was understood by plaintiff, it became the duty of the Secretary of the Interior to reserve and cause to be certified and conveyed to the company, from time to time as the work progressed on the main line, out of any public lands belonging to the United States not sold, reserved, or otherwise disposed of, or to which a pre-emption right or right of homestead settlement had not attached, and on which a bona fide settlement and improvement had not been made under color of title derived from the United States, or from the State of Iowa, within fifteen miles of the original main line, an amount of land equal to that originally authorized to be granted to aid in the construction of the line.

The object of this reservation was to separate the grant lands from the public domain, and secure them from settlement under claims adverse to the grant. But the Secretary failing to perform this duty, the company from time to time caused selections to be made in order that the matter might be brought directly before the Department, and to secure the benefit of the grants. In these selections, under the rulings and practice of the Land Office, only those tracts could be included which the register and receiver might deem vacant, and to inure to the grant; all other tracts would be struck from the list of selections as presented, and therefore only those about which the land officers thought there was no doubt would be included for certification; many tracts were thus struck out. These selections were regarded by the company as partial cleanings up of the grant. Some of them were made before the lands were earned or had inured, but were made to identify the lands as inuring to the grant, and thus secure them from conflicting claims. As a matter of fact the lands thus selected
64 were not certified until after the governor's final certificate in 1867 had shown that the company had earned the lands and were entitled to them. No lands west of range 33 were claimed to have been earned by the company prior to this certificate of the governor showing the final completion of the road; no lands west of this range were offered for sale prior to this certificate, nor did the company assume ownership over them otherwise than by its efforts to get them certified under the grant. I find by reference to our books that our first sale in Monona County was made February 15, 1868.

Cross-examination:

I have been assistant treasurer of plaintiff continuously since the summer of 1871, and have been stockholder of the company since April 13, 1872.

My supervision of the lands of plaintiff has arisen from my position partly as an officer of that company, and also because of my position as president of Iowa Railroad Land Company, which last company is the grantee of plaintiff; have been president of land company since the summer of 1872.

The Iowa Railroad Company was formed in June, 1869; the name of its officers for the first years after it was formed were: John I. Blair, president; W. W. Walker, vice-president and treasurer; Chas. C. Walker, secretary. Directors: John I. Blair, F. Nickerson, H. Williams, W. W. Walker, S. L. Thorndike, Oakes Ames, P. S. Crowell, D. C. Blair, and

Wm. T. Glidden. Executive committee: John I. Blair, D. C. Blair, Wm. T. Glidden, Oakes Ames, F. Nickerson.

For Cedar Rapids and Missouri River Railroad officers were: John I. Blair, president; E. Nickerson, vice-president; W. W. Walker, secretary; John I. Blair, treasurer. Executive committee: John I. Blair, W. W. Walker, Wm. T. Glidden, F. Nickerson, Oakes Ames. Directors: Oakes Ames, P. S. Crowell, R. G. Hazard, J. M. S. Williams, J. I. Blair, C. E. Vail, D. C. Blair, Oliver Ames, F. Nickerson, Wm. T. Glidden, J. B. Alley, James Blair, W. W. Walker, J. F. Ely, H. Williams.

Iowa Railroad Land Company officers, 1871, viz: Horace Williams, pres't; W. W. Walker, vice-pres't; C. E. Walker, sec'y; J. M. S. Williams, treas.; W. W. Walker, ass't treas.; C. H. Clark, register;
65 W. P. M. Means, reg. of stock. Executive committee: Horace Williams, John I. Blair, Jos. Nickerson, Wm. T. Glidden, Jas. F. Wilson. Directors: John B. Alley, Oliver Ames, Wm. B. Allison, John I. Blair, D. C. Blair, P. S. Crowell, Wm. T. Glidden, C. A. Lombard, Jos. Nickerson, S. L. Thorndike, W. W. Walker, H. Williams, J. F. Wilson.

Cedar Rapids and Missouri River Railroad officers for 1871: Horace Williams, pres't; F. Nickerson, vice-pres't; W. W. Walker, sec'y; John Bertram, treasurer; J. Van Deventer, ass't treas.; D. P. Kimball, register of stock. Executive committee: Horace Williams, F. Nickerson, Jos. Nickerson, J. I. Blair, S. L. Thorndike. Directors: John B. Alley, Oliver Ames, John I. Blair, D. C. Blair, John Bertram, J. F. Ely, Wm. T. Glidden, C. B. Hazeltine, C. A. Lombard, F. Nickerson, Jos. Nickerson, S. L. Thorndike, W. W. Walker, H. Williams, J. F. Wilson.

Iowa Railroad Land Company officers for 1872: J. Van Deventer, pres't; H. Williams, vice-pres't; G. T. Crandall, sec'y; J. M. S. Williams, treas.; J. Van Deventer, ass't treas.; C. H. Clark, reg. of lands;
W. P. M. Means, reg. of stock; P. E. Hall, auditor; J. B. Cal-
66 houn, commissioner. Executive committee: J. Van Deventer, J. I. Blair, J. Nickerson, H. Williams, W. T. Glidden. Directors: J. B. Alley, Oakes Ames, John I. Blair, D. C. Blair, P. S. Crowell, W. T. Glidden, E. Johnson, C. A. Lombard, J. Nickerson, S. L. Thorndike, J. Van Deventer, H. Williams, J. F. Wilson.

Cedar Rapids and Missouri River Railroad officers for 1872: Horace Williams, pres't; F. Nickerson, vice-pres't; P. E. Hall, sec'y; J. M. S. Williams, treas.; J. Van Deventer, ass't treas.; D. P. Kimball, reg. of stock; G. T. Crandall, auditor. Executive committee: Horace Williams, J. Nickerson, S. L. Thorndike, F. Nickerson, J. I. Blair. Directors: J. B. Alley, Oakes Ames, J. I. Blair, D. C. Blair, J. F. Ely, Wm. T. Glidden, E. Johnson, D. P. Kimball, C. N. Lombard, F. Nickerson, J. Nickerson, S. L. Thorndike, J. Van Deventer, H. Williams, J. M. S. Williams.

Iowa Railroad Land Company officers for 1873: J. Van Deventer, pres't; H. Williams, vice-pres't; G. T. Crandall, sec'y; J. M. Glidden, treas.; J. Van Deventer, ass't treas.; C. H. Clark, reg. of lands; W. P. M. Means, reg. of stock; P. E. Hall, auditor; J. B. Calhoun, L.
67 commissioner. Executive committee: J. Van Deventer, John I. Blair, J. Nickerson, H. Williams, W. T. Glidden. Directors: J. B. Alley, H. A. Ames, J. I. Blair, D. C. Blair, P. S. Crowell, W. T.

Glidden, E. Johnson, C. A. Lombard, J. Nickerson, S. L. Thorndike, J. Van Deventer, H. Williams, J. F. Wilson.

Cedar Rapids and Missouri River Railroad officers for 1873: Horace Williams, pres't; F. Nickerson, vice-pres't; P. E. Hall, sec'y; J. M. S. Williams, treas.; J. M. Glidden, treas.; J. Van Deventer, ass't treas.; D. P. Kimball, reg. of stock.; G. T. Crandall, auditor. Executive committee: Horace Williams, J. Nickerson, S. L. Thorndike, F. Nickerson, J. I. Blair. Directors: J. B. Alley, Oliver Ames, J. I. Blair, D. C. Blair, J. F. Ely, W. T. Glidden, E. Johnson, E. P. Kimball, C. A. Lombard, F. Nickerson, J. Nickerson, S. L. Thorndike, J. Van Deventer, H. Williams, J. M. S. Williams, J. M. Glidden.

Iowa Railroad Land Company officers for 1874: J. Van Deventer, pres't; P. E. Hall, vice-pres't; G. T. Crandall, sec'y; J. M. Glidden, treas.; J. Van Deventer, ass't treas.; J. B. Calhoun, l'd commissioner; P. E. Hall, auditor; L. H. Clark, reg. of lands; J M. Glidden, reg. of stock. Executive committee: J. Van Deventer, F. L. Ames, J. I. Blair, J. Nickerson, H. Williams. Directors: John B. Alley, Oliver Ames, F. L. Ames, J. I. Blair, D. C. Blair, P. S. Crowell, W. T. Glidden, P. E. Hall, E. Johnson, J. Nickerson, S. L. Thorndike, J. Van Deventer, H. Williams.

68

Cedar Rapids and Missouri River Railroad for 1874: H. Williams, pres't; F. Nickerson, vice-pres't; P. E. Hall, sec'y; J. M. Glidden, treas.; J. Van Deventer, ass't treas.; G. T. Crandall, auditor; J. M. Glidden, reg. of stock. Executive committee: Horace Williams, F. Nickerson, F. L. Ames, J. Nickerson, J. I. Blair. Directors: J. B. Alley, Oliver Ames, F. L. Ames, J. I. Blair, D. C. Blair, F. G. Dexter, W. T. Glidden, J. M. Glidden, E. Johnson, D. P. Kimball, F. Nickerson, J. Nickerson, S. L. Thorndike, J. Van Deventer, H. Williams.

Iowa Railroad Land Company officers for 1875: J. Van Deventer, pres't; P. E. Hall, vice-pres't; G. T. Crandall, sec'y; J. M. Glidden, treas.; J. Van Deventer, ass't treas.; J. B. Calhoun, land com'r; P. E. Hall, auditor; C. H. Clark, reg. of lands; J. M. Glidden, reg. of stock; Executive committee: J. Van Deventer, F. L. Ames, J. I. Blair, J. Nickerson, H. Williams. Directors: J. B. Alley, Oliver Ames, F. L. Ames, J. I. Blair, D. C. Blair, James Blair, P. S. Crowell, Wm. T. Glidden, P. E. Hall, E. Johnson, J. Nickerson, J. Van Deventer, H. Williams.

69

Cedar Rapids and Missouri River Railroad officers for 1875: Horace Williams, pres't; F. Nickerson, vice-pres't; P. E. Hall, sec'y; J. M. Glidden, treas.; J. Van Deventer, ass't treas.; G. T. Crandall, auditor; J. M. Glidden, reg. of stock. Executive committee: Horace Williams, F. Nickerson, F. L. Ames, J. Nickerson, J. I. Blair. Directors: J. B. Alley, Oliver Ames, F. L. Ames, J. I. Blair, D. C. Blair, James Blair, F. G. Dexter, J. M. Glidden, E. Johnson, D. T. Kimball, F. Nickerson, J. Nickerson, S. L. Thorndike, C. E. Vail, H. Williams.

Iowa Railroad Land Company officers, 1876 & 1877: J. Van Deventer, pres't; P. E. Hall, vice-pres't; G. T. Crandall, sec'y; J. M. Glidden, treas.; J. Van Deventer, ass't treas.; J. B. Calhoun, land com'r; P. E. Hall, auditor; C. H. Clark, reg. of lands; J. M. Glidden, reg. of stock. Executive committee: J. Van Deventer, F. L. Ames, J. I. Blair, J. Nickerson, H. Williams. Directors: J. B. Alley,

70

Oliver Ames, F. L. Ames, J. I. Blair, D. C. Blair, James Blair, P. S. Crowell, W. T. Glidden, P. E. Hall, E. Johnson, J. Nickerson, J. Van Deventer, H. Williams.

Cedar Rapids and Missouri River Railroad officers for 1876 and 1877: Horace Williams, pres't; F. Nickerson, vice-pres't; P. E. Hall, sec'y; J. M. Glidden, treas.; J. Van Deventer, ass't treas.; G. T. Crandall, auditor; J. M. Glidden, reg. of stock. Executive committee: Horace Williams, F. Nickerson, F. L. Ames, J. I. Blair, T. Nickerson. Directors: J. B. Alley, Oliver Ames, F. L. Ames, J. I. Blair, D. C. Blair, James Blair, F. G. Dexter, J. M. Glidden, E. Johnson, D. P. Kimball, F. Nickerson, J. Nickerson, S. L. Thorndike, C. E. Vail, H. Williams.

The officers, directors, and executive committee of the plaintiff have not held corresponding positions in the land company since the organization to the present time, although there have always been some members of one board serving on the other and some officers of one company officers of the other.

The Cedar Rapids and Missouri River Railroad, about Sept. 15, 1869, conveyed to the Iowa Railroad Land Company specific tracts
71 covering all that had been certified, and also, by the same conveyance, what it might hereafter acquire from the United States or the State for or on account of the construction of its railroad.

Ques. Here is a map (here counsel shows witness accompanying map); examine it and state whether since the organization of the Iowa Railroad Land Company it has not sent to Monona County, and other counties in which it claims land, large numbers of similar maps every year; and whether the maps sent out each year were not marked in the same way as this one, except that in the first map sent out some of the lands marked on this as sold were marked to indicate that they were for sale, and others, marked on this as sold, marked to indicate that they were for sale. State in what respect maps previously sent to Monona County differed from this one. Mark the map "Exhibit A," and make it a part of your deposition. State whether this map purports to be a map of all the land in Monona County that is claimed by said companies, as well as that not claimed by them or either of them.

Ans. The map submitted is one sent out by the Iowa Railroad Land Company as an advertisement. (Commissioner shows witness map accompanying interrogatory. Witness returns same attached to his deposition, marked "Exhibit A." Attached to testimony as Exhibit A to deposition of J. Van Deventer. See tr., p. 398.) Many editions of it have been sent out, and have been substantially correct as showing the lands the company was offering for sale. It has always intended to have the maps issued serve as a general guide to the lands, and to have them include only those tracts to which the company had perfect title. Lands in dispute, or only claimed, were not designated on the map as belonging to the company. Not having all the editions of the map on hand, I am unable to state in what particulars this one differs from any or all of the others. I have knowledge of such maps having been sent out from to time, as I have been an officer of said companies.

Ques. State whether you, as an officer and agent of I. R. R. R. L. Co., kept yourself, as an officer and agent of the C. R. & M. R. R. R., posted as to what you were doing as officer and agent of the former company.

Ans. Any information I might have as an officer or agent of one of the companies, I presume, was available to me as an officer or agent of the other.

72 Ques. 9. If, in answer to direct interrogatory six, you state that the plaintiff ever made any claims to any of the lands in controversy in Monona County, or any lands in even-numbered sections in said county not certified to it by the Secretary of the Interior, and that such claim was made prior to the year 1874, you will state in what way, within your personal knowledge, the plaintiff, prior to 1874, other than by sending out maps of the character before mentioned, plaintiff have apprized any of the defendants of such claim. Name the defendant in the case now pending in Monona County to whom such information was given prior to 1874. State when such information was given; how given; by whom, and how you know that it was given, as stated by you.

Ans. My answer to the direct interrogatory does not require any answer to them.

Ques. Attach printed copy of the circular letter of instructions issued by general land officers, under act of Congress of July 1, 1864—the circular of instructions approved June 6, 1866, by the Secretary of the Interior, relative to selection of land under rail/road grants; attach a printed or written copy of such instructions, marked "Exhibit B."

Ans. I have not the circulars or letters of instruction called for by the question, and cannot therefore attach them.

The company appointed agents to make selections at different times; not having copies of all the list of selections, I am unable to give the names of all the agents so appointed; the lists themselves will show by whom they were made and their authority to act.

Ques. Does the following statement show the whole amount of lands selected by the plaintiff down to and including October 15, 1875, and the dates at which such selections were made, and the number of lands selected at each time, to wit:

July 28, 1865, 4,395 acres.
August 15, 1866, 139,365 acres.
October 22, 1866, 191,438 acres.
August 29, 1867, 41,999 acres.
March 31, 1872, 2,258 acres.
July 26, 1872, 1,026 acres.
November 16, 1874, 859 acres.
December 12, 1874, 3,274 acres.
December 21, 1874, 4,704 acres.
October 15, 1875, 406 acres.

73 If the above is incorrect, state wherein, and give a correct statement of the times at which such selections were made and entered at the local land office, or lists sent to local land offices, or deposited ther'in up to October 15, 1875, and the amount selected at such times.

Ans. I am unable to state whether the lists of selections given above is correct or not, as I have not been able to find in the office of the plaintiff or of the I. R. R. L. Co. copies of all the lists of selections made—even of all those stated in the question. The selections of July 28, 1865, mentioned in the question, with a few exceptions, embrace lands already certified to the State under act of 1856.

Ques. If plaintiff claimed any of the lands, the title of which is involved in the suits now pending in Monona County, Iowa, prior to 1874, why were they not included in the lists of selections made before that time? Why did the company cease entirely from August, 1867, to March 31, 1872? Was it because the plaintiff got tired and wanted to rest, or because they had selected as much as they thought they were entitled to under the grant of 1864?

Ans. The company appointed agents in the different land districts to make selections, in order that the grant lands might be identified; but no instructions were given to the agents to select any particular lands or class of lands. They selected lands concerning which there could be no conflict. I was not an officer of the company till 1871, and not in charge of the lands till 1872, and have not personal knowledge of the reason why these homestead lands were not selected earlier.

Ques. Do you know how it happened that under the selections plaintiff did make they escaped conflict with the homestead and other entries of defendant in the cases now pending in Monona County, Iowa, made between the passage of the June 2, 1864, act, and the time of making such selections? Do you think it merely accidental in every case?

Ans. I do not.

Ques. What, if any, proceedings have been instituted by plaintiff in the Department or before the courts to which either of the defendants in any of the suits now pending in Monona County, Iowa, were parties, and of which they had notice prior to 1874, to test the validity of such
74 entries? Name the defendants who were made parties to such proceedings, and so notified of plaintiff's claim, and state when such proceedings were instituted, and the defendant notified, if prior to 1874, and state before what tribunal said proceedings were had.

Ans. I do not remember whether any of the test cases which were submitted to the Land Department for the purpose of determining the validity of the homestead entries originally in Monona County, and at so early a day as to require notice to the defendant prior to 1874. The case of Johnson L. DePuy was decided by the Commissioner of General Land Office July 16, 1874, and affirmed subsequently by the Secretary of the Interior. The test case of J. D. Havens, from Ida County, involving similar questions, was decided by Commissioner April 4, 1874, and affirmed by Secretary of Interior December following. The cases of George Castle, M. J. P. Jenness, H. W. Nobles were also test cases, and the entries were canceled September 11, 1874. Until these test cases were decided, and they hung for a long time, it was not thought necessary to begin on other cases.

I don't know of any suit being brought by the plaintiff The Cedar Rapids and Missouri River Railroad against The Des Moines River Company.

Ques. Here is a letter purporting to have been written by you. Examine it and state if you know in whose handwriting it is; whether it was written by you or by your suggestion or direction, and whether you saw it or knew of it at or about the time it bears date or before it was mailed to the parties to whom it is addressed. Mark it "Exhibit D," and attach it to your deposition. State whether the land to which you say in this letter you have not abandoned claim are not all the lands not embraced in the Courtright suit therein referred to, and which had been sold by the old Iowa Central Air Line Company under the grant of 1856, as alleged be-

fore the resumption by the State, and the passage of the act of the State legislature conferring said grant upon plaintiff; state the source of title under which plaintiff claimed such land at the time of said letter; attach to your deposition a printed copy of the abstract of record filed by plaintiff herein either in the supreme court of the State or in the United States in the Courtright case.

75 Ans. Commissioner shows witnesses' letter attached, which witness returned as part of his deposition, marked "Exhibit D," which letter is as follows:

"OFFICE IOWA RAILROAD LAND COMPANY,
"CEDAR RAPIDS, IA., *June* 20, 1876.

"Messrs. MONK & SELLECK, *Onawa:*

"GENTLEMEN: Yours of the 13th in regard to N. ½ SW. ¼ and S. ½ NW. ¼, 11, 84, 42, is at hand.

"We will return to Mr. Dorothy the consideration money paid with interest thereon at 6 per cent. per annum on his reconveying to the company the same title which he obtained from it, and he can then, if he so desires, purchase the claim of the old Iowa Central Air Line Railroad Company. But we wish it to be distinctly understood that we do not and have not abandoned our claim to the lands, excepting only those actually embraced in the Courtright suit. The decision in that case affects, of course, only the lands named in it, and those were divided with Mr. Courtright before the result was known. All the other Air Line lands stand as before, and Mr. Moore's like the rest; after that case was in the Supreme Court, and when it was too late to get in other evidence, matters came to our knowledge which, we believe, would have materially changed the result as directly affecting the merits, had they been pleaded in the case. If Mr. Dorothy concludes it to be wise to hold under our title we will defend him if suit is brought, and if ultimately evicted he could obtain compensation for his improvements under the occupying claimant law, and could undoubtedly make better terms than he is now offered. Negotiations were pending with the representatives of Zebulon Moore's estate for a compromise of the title on the basis adopted by Courtright and others when the decision was announced, and we regard our claim as being st'onger now with the new evidence we have than when the Courtright case was made up.

"J. VAN DEVENTER, *Pres't.*"

The letter was written by me, and speaks for itself. The title to Air Line lands, so called, is not involved inthe present suit, and I am not now prepared to allow the attorneys for defendants herein to fish out in this suit matters of defence to suits of entirely different nature.

I don't know the distance from Anamosa to Cedar Rapids, on the

76 D. & S. W. R. R. The contract referred to in the question between plaintiff and 'latt Smith, attorney, for certain owners of a judgment against Iowa Central Air Line Company, executed June 20, 1867, cannot be found. I presume it is on file with the papers in the suit reported in the 43d Iowa.

From the fact that copies of all the lists of selections made are not in my office, I am not able to state the number of acres selected under act of 1864, in the Des Moines and Fort Dodge districts, nor when they were finally acted upon. Certified lists have been as follows, under the act of 1864:

DES MOINES DISTRICT.

April 20, 1869, 12,169 acres.
November 14, 1873, 480 acres.
July 25, 1874, 2,338.69 acres.
April 6, 1875, 3,485.36 acres.
November 16, 1875, 406 acres.
March 8, 1877, 6,598.59 acres.
April 9, 1877, 800 acres.

FORT DODGE DISTRICT.

April 20, 1869, 3,515.91 acres.

I don't know with what claims the selections conflicted.

Ques. Are not some of the lands mentioned in your answer to direct interrogatory four as being within 20-mile limit of the modified line of road, also within the 15-mile limits of the original line? Do not the two lines cross?

Ans. The tracts are not duplicated in certifications; my answer to the direct interrogatory was made up from certified lists.

No road was ever built east of Cedar Rapids by the plaintiff, except the Lyons Plug, so called. The Lyons Plug, so called, extends from Lyons to Clinton, and is 2.41 miles in length.

If W. W. Walker ever made an affidavit in regard to the completion of plaintiff's road in 1867, it is probably on file in the case in which it was made. I don't recall the matter now.

Cedar Rapids, Iowa, is between 81 and 82 miles west of Clinton, measuring both distances from the C. & N. W. R. R.

In the first batch of cases brought in Monona County by plaintiff there are 6,095 acres involved. In the second batch there are about 16,000 acres in all the counties. I have not the data made up as to this
77 batch, so that I can give the precise number of acres in all, or those in Monona County. There are in the first batch in all the counties 20,291 acres involved. (Tr., pp. 375–441.)

In the second deposition of J. Van Deventer, taken October 18, 1877, witness testified as follows:

I am the same James Van Deventer who before testified in this action.

Ques. When did you or the officers of plaintiff or of Iowa Railroad Land Company first have knowledge or notice that improvements were being made and buildings erected upon the lands involved in this action, and in other actions of a like nature now pending in the district court of Monona county, Iowa, and how came you or the company by such knowledge?

Ans. No notice has been given to me or to any of the officers of plaintiff or of Iowa Railroad Land Company, so far as I know, of the improvement claimed to have been made upon any of the tracts embraced in these homestead suits; nor have I had knowledge of what improvements have been made and what buildings erected, or if any have been made or erected upon these lands, and, so far as I know, the same is the case with the other officers of plaintiff and of the land company. It has been the custom of the office to have examinations made of the certified lands only, and the reports of the examiners have been confined to this class of lands. In fall

of 1872, or early in 1873, I think, it was concluded to have a thorough examination made of the records at Washington, and at the local land office in the State, to ascertain what lands, if any, belonging to the grant remains yet uncertified. These examinations brought to light the fact that many tracts within the limits of the grant were claimed adversely as shown by the records of the United States Land Office. As the examination progressed the clear lands were from time to time selected, and test cases begun before the Department to remove the adverse claims. The same process of clearing up our grant is now continuing. From the existence of so many adverse claims being from time to time discovered it was a matter of reasonable inference that improvements had been made on lands so claimed, but by whom or what tracts and to what extent I had and have no knowledge.

78 Ques. You may state fully the object and purpose of conveying the lands of plaintiff to Iowa Railroad Land Company; what relation the latter company sustains to the plaintiff and the method of conveying lands; also as between the two companies, when the title is considered vested in the Iowa Railroad Land Company. Explains these matters fully, and as an officer of both companies by whom the uncertified lands are now claimed, and, in fact, owned.

Ans. I was not an officer of either plaintiff or the Iowa Railroad Land Company at the time the grant lands were first conveyed, and cannot state the object and purpose of the conveyance any more than that I have always understood it to have been an out-and-out sale of the property so far as then certified, with the agreement that lands subsequently acquired by the plaintiff should be conveyed after their title had been obtained, so that conveyances could be made by specific descriptions. The records of plaintiff show that the first conveyances covered all the lands then certified and were, by specific descriptions of the tracts, conveyed. And, in furtherance of the agreement mentioned, it has been the custom of the plaintiff to convey, by specific description, to the land co., from time to time, as lands have been certified. As between the two companies the legal title to the lands in controver'y is considered as remaining in, and belonging to, plaintiff, until the lands have been conveyed by specific descriptions to the land company. The uncertified lands belonging to the grant are claimed by the railroad company, the plaintiff in these suits, and are, in fact, owned by it. This is the relation between the two companies, as I understand it, as an officer of both, so far as the grant lands are concerned.

Cross-examination:

The Iowa Railroad Land Company is not connected in interest with any other company. Several other companies have their offices in the same building, and some of the officers of Iowa Railroad Land Company are also officers in some other of the companies; but the interests of each company are wholly separate and distinct; the property of each is separate; separate records and accounts are kept; separate conveyances are made by each company of its property, its own proper officers executing them. For the sake of economy, and to prevent confusion, the land business is advertised in name of Iowa Railroad Land Company, and some other business

79 pertaining to lands is transacted by it, the expense therefor being on the books of that company, in the first instance, to "joint expenses," but are afterwards distributed between the companies, each

paying its appropriate share. Each company pays its own officers, its own taxes, and all other expenses except those which are pooled in the first instance for the sake of convenience and economy in management as just stated. And the receipts from the property of each are kept separate and distinct from all others in all the books and accounts, each company having its own books. Each company has stockholders who do not appear in the other companies, and to all intents and purposes the interests of each are kept separate and distinct, although to a certain extent each is managed by officers, some, but not all of whom, are officers in some or all of the other land or lot companies. Among the companies thus acting in harmony are the plaintiff, the Iowa Falls and Sioux City Railroad Company, the Sioux City and Pacific Railroad Company, the Blair Town-lot and Land Company, the Sioux City and Iowa Falls Town-lot and Land Company, the Missouri Valley Land Company, and the Moingona Coal Company. In the corporation of plaintiff there were, in May last, 287 stockholders, of whom 35 were not stockholders in the land company; and in the land company there were about 264 stockholders, of whom 12 were not stockholders in the railroad company. Many who are stockholders in both companies do not hold the same amount of stock in each.

Ques. If you have stated when the officers of plaintiff, other than yourself, first had knowledge that improvements were being made on the lands in controversy, you will please inform us how you are enabled to give the time when such persons acquired their knowledge upon the subject; do you know it from hearsay or intuition?

Ans. I don't know it at all.

I did not know the status of the lands in controversy until it was brought to light by the investigations made for the purpose of clearing up the grant finally, which I have answered in answer to direct interrogatory. I am not able to say when I first learned that these lands were not certified. I don't know that the Department ever refused to certify these lands.

Ques. Did you know that from Aug. 29, 1867, to March, 1872, the plaintiff made no selections; and, if so, when did it come to your knowledge?

80 Ans. I was not aware that such was the fact until quite recently, my attention not being specially called to it. I did not become an active officer of the company until 1872.

Ques. At the end of five years, during which plaintiff made no selections, what did you suppose the Government had done, or would do, with lands within the limits remaining unselected and uncertified?

Ans. I am unable to recall any suppositions, if I made any, in regard to the matter.

Ques. How long do you suppose the Department ought to wait the selection of the lands claimed by plaintiff, after calling upon it to make such selections, before placing the land upon the market?

Ans. The Department never called upon the plaintiff to make selections, and I am unable to form an opinion upon the supposititious case presented by the question.

I don't recollect when I first learned of the passage of the homestead act. I have always supposed that settlement was an essential requirement under it. I believe the lands involved in the suit of plaintiff against settlers in Monona and other counties are all uncertified excepting two tracts

in Monona County of 80 acres each, certified April 19, 1877. These are E. ½ SE. ¼ and W. ½ SE. ¼, 2, 85, 43.

Ques. Do you think, or are you advised, that it is important to distinguish between the lands certified within the 15-mile limits of the original line and those within the 20-mile limits of the modified line? If you so think, or are so advised, you will now state why, in your former deposition, you did not answer squarely the cross-interrogatory in which you were asked to state whether some of the land referred to in your direct examination as being within the 20-mile limits of the modified line was not also within the 15-mile limits of the original line.

Ans. I resent the imputation cast in the interrogatory that I did not answer squarely anything asked for, so far as the form of the interrogatory would permit me to understand its scope and object. I have not been advised that it is important to distinguish between the lands certified within the different limits named in the grant, nor do I think such distinction of any importance.

Ques. You may state whether the following-described lands are not included in the lists certified as being within the 20-mile limits
81 of the modified line, to wit: All of sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, and 36, in town 85, range 35; all of sections 4, 6, 8, 10, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, and 36, in T. 85, R. 34; all of sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, and 36, T. 85, R. 36; all of sections 10, 14, 20, 22, 24, 26, 28, 30, 32, and 34, Tp. 86, R. 36; all of sections 12, 18, 20, 30, 34, and 36, T. 86, R. 37; all of sections 14, 18, 24, 26, 30, and 36, T. 87, R. 37; all of sections 2, 4, 6, 8, 10, 14, 18, 20, 22, 24, 26, 28, 30, and 36, T. 86, R. 38; all of sections 14, 20, 24, 26, 30, 32, and 34, T. 87, R. 38; all of sections 2, 4, 6, 8, 10, 12, 14, 18, 22, and 24, in T. 86, R. 39; all sections 4, 6, 8, 18, and 20, in T. 84, R. 42; all of sections 12, 14, 20, 22, 24, 26, 28, 30, 32, and 34, T. 85, R. 42. Are these lands not also within the 15-mile limits of the original line? What portion of them are outside of the 15-mile limits or not certified as being in the 20-mile limits aforesaid?

Ans. The lands mentioned appear from the certified map showing the limits of the grant to be, some of them within the six and the rest within the 15 mile limits of the original grant, and they are also within the 20-mile limits of modified line. The certified lists describe them "as being the vacant and unappropriated lands granted by the 4th section of said amended act within 20 miles on each side of the modified line of said railroad," etc.

Ques. Don't you well know that all or nearly all the certified lands under the grant of 1864 within the 20-mile limits of the modified line were certified as being within those limits regardless of whether they were within the 15-mile limits of the original line? Have you or can you procure the report of the register of State land office for the year 1871? Is the list of lands purporting to be the list within 20-mile limits, Sioux City and Council Bluffs district, approved by Secretary of Interior July 18, 1868, and beginning on page 148 and ending on page 160 of said report, a correct list of lands in said districts, certified or approved by the Secretary as of said date, and as being within the 20-mile limits? If not, wherein does it differ from the original list? Attach a copy of said report of 1871; mark it "Exhibit A." If you don't choose to compare it with the lists, attach a copy of all

lists certified under act of June 2, 1864, as being within the 20-mile limits, marked "Exhibit B," and make it part of your answer.

82 Ans. (Report of 1871, attached to the commission, shown to the witness, and his attention called to the pages designated in the interrogatory, which report is herewith returned, marked "Exhibit A," and pages designated being marked as directed.) This report is attached to the transcript as Exhibit A to deposition of J. Van Deventer. (Tr., pp. 463.) Witness then answers: Of the lands certified under the act of 1864, 226,263 acres are certified as within the 20-mile limits of the modified line, many of them being within the 15-mile limits of the original line also. The map to be produced on the trial will show the location of these lands with reference to the distance line from the line of road. The report of the register of State land office on the pages named contain an aggregate of 201,072.77 acres, which quantity corresponds with the quantity of two certified lists of the date named, and I presume the specific tracts named in the report are correctly given. My answers have been partly from personal knowledge and partly from information obtained from various sources, among which have been the records of the companies' official correspondence and transactions of business in relation to the matters treated of. When not on personal knowledge, I have generally, I think, designated my source of information in the replies. (See Tr., pp. 442–463.)

Plaintiffs next offer in evidence deposition of WM. T. STEIGER, who testified as follows:

My name is Wm. T. Steiger, of lawful age; reside in Howard County, Md. I resided from December, 1833, to November, 1864, in Washington City, when I removed to Howard County.

My official connection with the Cedar Rapids and Missouri River Railroad Company has been from January 20, 1865, as assistant agent to Messrs. Oakes Ames and J. I. Blair, and the agent and attorney to the present time under a subsequent engagement with the Iowa R. R. L. Co., my compensation being a salary.

Ques. Give a full and complete narrative of all you have done as agent of said company in the following respects: First. To procure the certification of lands granted it under the act of Congress of June 2, 1864. Second. To resist homestead, pre-emption, and other entries of land claimed by or granted to the plaintiff. Third. What lands you have claimed for plaintiff to be within the limits and inuring to the company under the grant, and when and how you made such claim?

83 Ans. 1. On the 20th of January, 1865, Oakes Ames and J. I. Blair being present in Washington, addressed a letter to the Interior Department, filing their credentials as agents to represent the company, and requesting that I might be recognized as their assistant agent at Washington. (Exhibit A, attached to this deposition.) I immediately took charge, and have since been recognized as such; also as agent and attorney of the Iowa Railroad Land Company. Our first efforts were to procure the issue of evidence of direct title of the lands previously approved to the State, under the act of 1856, for the Iowa Central Air Line Road, predecessor of the Cedar Rapids and Missouri River Railroad, which, for reasons assigned, were denied, but resulted in furnishing the company with certified copies of said lists. It would be a long history, beyond the limits

of this answer, to detail all the efforts which have been since made to obtain the certification of the lands yet due the company under act of 1864, spreading over a voluminous correspondence of some 12 years. I can therefore only give prominent portions, and that chiefly relating to the lands in Sioux City and Council Bluffs districts, where the great bulk of the land north of the 20-mile line in controversy, are situated, including those in Monona County. I find that the first selections were made by authorized Iowa agents of the company, and the land approved to the road under the act of 2d June, 1864, as follows, to wit:

SIOUX CITY DISTRICT.

By Thos. J. Stone, selected October 22, 1866, even numbered sections north of 20-mile line corrected	125,649.64
South of 20-mile line	64,655.66
	190,305.30

Approved lists in Nos. 45 and 46, July 18, 1868.

COUNCIL BLUFFS DISTRICT.

By C. H. Street, selected August 15, 1866, even numbered south of 20-mile line corrected	136,416.41

Approved in list No. 47, July 18, 1868.

FORT DODGE DISTRICT.

By Dawley, about some time in 1865–'66, under act of 1864, even sections, 20-mile limits	3,515.91

Approved in list No. 60, April 20, 1869.

84 FORT DES MOINES DISTRICT.

By F. G. Clark, about some time in 1865–'66, under act 1856, list 57, 6-mile limit as corrected	916.10	
List 58, 15-mile limit as corrected	1,595.40	
	2,511.50	
Under act of 1864, 20-mile limit as corrected	12,169.06	
		14,680.56
Making in the aggregate approved		344,918.18

and comprising the bulk of the lands granted by the act of June 2, 1864. I think it was shortly after the approval of the selections of Messrs. Dawley and Clark, to wit, April 20, 1869, that by an arrangement with the company I took up the above-mentioned original lists of selections with a view to examine and revise the whole grant, and found by a careful and laborious comparison with the General Land Office tract books, that quite a number of vacant tracts inuring to the road in all the

four districts had been omitted, and that as a rule the local officers had disallowed and struck out all lands enumerated by standing homestead or preemption entries, or other claims, whether valid or not, thus leaving them for a future adjudication, and I at once prepared lists of selections of such lands for each district, the originals of which lists are still in my files and in my possession, when, by a letter received from J. I. Blair, dated June 9, 1869 (see Exhibit B, hereto attached), my relations to the company to take effect 1st of June, were materially changed, in consequence, I believe, of some change in the ownership, or at least the control of the grant by consolidation with Iowa Railroad Land Company, which for some time interrupted further proceedings on my part as to selections, until, I think, in May, 1870, when I took up the old lists again, and in course of my examination, some time between May and September, 1870, I found that all the vacant lands in the even-numbered sections north of 20-mile line, Council Bluffs district, which had been all included in my list of 1869 for selection, had been restored to market in 1867, and this accounted for the numerous homestead entries found when preparing my list in 1869.

This action was a surprise to me, since according to my construction of the act of June 2, 1864, at that time, such lands all
85 inured to the road, and took effect at the date of the law. It is true I had seen the public printed notice of restoration No. 711, but that only gave aggregates (see Exhibit C attached hereto), and I had no means of knowing the particulars, except from the office lists, which I afterwards learned had been sent to the land officers, but which I had never seen, and which have since been repudiated by the Department in its rulings as "erroneous and illegal," so far at least as they restored the road lands in the Council Bluffs district and Monona County. It was simply a mistake of the clerks who prepared the lists of restoration in examining the order of the Commissioner and the Secretary of May 30, and June 2, 1866, (see Exhibits D and E), which expressly directed the restoration of the lands to market "so as not to interfere with the grants of 2d June and May 12, 1864." Therefore in preparing my lists for selections about September 20, 1870 (as noted on the old lists), I concluded it would be useless to select any of the lands in even-numbered sections north of 20-mile line, until the error of their restoration to market could be inquired into and corrected, for, of course, if selected, being in conflict with numerous standing homesteads and pre-emptions made under the public notice, the land officers would not allow them. I erased them from my list, as shown by the red lines on the answered abstract therefrom with a map (Exhibit F, attached), which is an exact copy from my old original Council Bluffs list, including the pencil memoranda in the margin of conflicting homesteads considered invalid, being initiated after June 2, 1864, and, as will be seen, including the homestead of Benj. Henning on E. ½ of NW. ¼, section 20, Tp. 84, R. 46, supposed to be the defendant in this suit.

As soon as practicable I put the new lists in form, and after some delay for the reception of the usual certificates of my agency to be attached thereto, which did not reach me until March 6, 1871, I executed and forwarded them to the company March 18, 1871, and I find that the Council Bluffs list, covering originally 11,924.20 acres, after various office delays, was approved as corrected September 2, 1872, after being reduced to only 960 acres clear lands, most of the difference being conflicting entries

for future adjudication. As showing the inconsistency of the clerks who prepared the lists of restoration of 1867, whilst they included in the
86 lists the lands north of 20-mile line in Council Bluffs district, a large body of the very same character of lands in the Sioux City district, selected by Mr. Stone, as above stated, were approved to road July 18, 1868, to wit: the 125,649.64 acres on even-numbered sections north of 20-mile line, confirming my impression that such lands were not restored by the public notice. From all the foregoing it will be seen that up to September 2, 1872, the date of approval of the clear lands found in my selections of March 18, 1872, no time was lost by the company or its agents in their efforts to secure the benefits of the act of 1856 and 1864, especially in the *the* Council Bluffs district and Monona County, as the voluminous correspondence of the officers with the Department, could it be introduced here, would show still more conclusively that, in fact, the delays that did occur, as will be seen by a comparison of the above selection and approval, were attributable to delays of official executive action, and furthermore, that the lands in controversy north of the 20-mile line in Monona County were persistently claimed by the company and its agents both before and after the fact was known to them that they had been inadvertently restored to market in 1867.

Then, after a protracted correspondence in regard to conflicting claims of every description, among them claims to these lands north of the 20-mile line in the Council Bluffs district and Monona County, and after repeated decisions of the Secretary of Interior in several appeal cases, awarding lands of this character to the road on the principles claimed by the company, and some of which were selected by me and approved November 16, 1875 (I allude to the case of J. D. Havens, J. L. DuPuy, Needles, Jenness, and Castles—a printed argument in the case of Gurdon Colton—see Exhibit G, attached to tr., p. 525), it was considered the proper time to bring all the claims of this character regularly before the Department for adjudication and final action. I therefore prepared for selection from my various memoranda a complete list of them, including other scattering tracts; that for Des Moines, including Council Bluffs district, aggregating 26,091.73 acres, which I transmitted to Iowa December 13, 1875, and they were, after making some additions, regularly selected and filed by the company's agent, Wm. Rogan, in due time, and have since been reported by the registers and receivers, with their action thereon.

As was to be expected these officers disallowed and struck out all
87 tracts covered by standing homesteads, only allowing and certifying to the road tracts clear of such incumbrances, and, with exceptions, the bulk of the lands thus stricken out now stand before the Department for final adjudication, after the test cases of Colton and others, now before it on appeal, involving also the construction of the act of Congress approved April 26, 1876, shall be disposed of, as will more fully appear from my printed argument and that of Jos. F. Wilson in the case. (Exhibits G and H attached to transcript, pp. 525–6.)

2. In addition to what has already been said under the first head in regard to the resistance made to homesteads, pre-emption, and other claims upon the road lands, my records show that from January 20, 1865, when I took charge, up to the present time, it has been a continuous battle, and that the attention of the Commissioner was called early to the subject.

To begin at the foundation, the Commissioner, under date June 16, 1864, (see Exhibit I, p. 7, attached to tr., p. 527, being Burdette letter, ab., pp. 50–61), withdrew from sale or entry, pre-emption or homestead, lands granted by the act of 1864, and in his report to the Secretary of June 25, 2864 (Exhibit I, p. 7, pp. ab. 50–61), held that both the odd and even numbered sections passed to the grant, but by instructions issued August 25, 1864 (Exhibit I, p. 8, attached to tr., p. 370), he modified his previous instructions of the 16th of June, so as to allow pre-emption and homesteads on the withdrawn lands, which last instructions, as the act of June 2, 1864, took effect at the date as since uniformally admitted, we considered were without warrant of law. Besides, the whole of these lands had already been withdrawn May 15, 1856, and stood reserved from sale or pre-emption on June 2, 1864, by which they were regranted, and it would seem were beyond the power of the executive office to make any other disposition of them. Under these circumstances, as early as May 8, 1865, Messrs. Walker, Ames, and Blair, representing the railroad company, addressed a joint letter to me, to be submitted to the commissioners (see Exhibit K, ab., p. 41), which was submitted with my letter of May 12 (see Ex. L, ab., p. 42–3), calling special attention to the subject, and repeated in my letter Aug. 22 (see Exhibit M, ab., p. 60), and the Commissioner issued the counter-instructions of June 7, 1865 (see Exhibit I, p. 11, attached to tr., p. 527; ab., p. 43). At this time it must be borne in mind that the
88 map of the amended line had not yet been filed and the lateral limits laid down, hence the terms "within the additional 5 miles" in the instructions. It will also be observed that they are made retrospective as to any claims or entries initiated after June 2, 1864, the date of the granting act, which appears to be the first official announcement that this grant took effect at the date of the law, which has since become res adjudicata, and governed in the rulings of the Department as directly stated in Commissioner's report of January 19, 1876, in reply to Addison Oliver, printed copy annexed (Exhibit I, attached to tr., 363–372; ab., pp. 50–61), in which he also proclaims that the restoration of the lands north of 20-mile line was "erroneous and illegal," and otherwise affirms all that railroad company ever claimed. Again, the Commissioner, on the complaint of Isaac Cook, then land commissioner of Cedar Rapids and Missouri Railroad, that the land officers were still permitting numerous invalid pre-emption entries upon the road lands by parties who were devastating the timber, etc., issued, under date of September 20, 1866 (see Exhibit N), general instructions to all the registers and receivers, in substance, directing them to discontinue the practice complained of, to report in each case, and to notify the parties that their entries would be canceled.

It cannot be expected of me in this answer to go into detailed statement of all the numerous claims alleged on the road lands. If I were to do so, the record would show a long list of such which have been discussed and decided from time to time, of claims improperly allowed by the land officers, and canceled in the General Land Office records, and that, as heretofore remarked, that it has been a continuous battle, as may also be inferred from the foregoing instructions and exhibits. 3d head. As explained in my answer under first head, when constructing my first old list for selection in 1869, and before I discovered that the lands north of 20-mile

limits had been restored to market in 1867, I included, as will be seen, all such lands in my list, thus claiming them as inuring to the road, according to my construction of the law. Whatever doubts I may have entertained before, I had none then, after a careful examination of the provisions of the fourth section of the granting act, which, in express terms, grants for it the public lands within the original main line of the grant of May 15, 1856, and, second, indemnity lands from any other available public lands within 20 miles of the amended line of the route.

89 Likewise by Mr. Stone's selections in the Sioux City district in 1866, heretofore mentioned approved to the road in 1868, they were successfully claimed for the company at that early day.

Cross-examination:

As stated in my examination-in-chief, I commenced service and was recognized as assistant agent for the Cedar Rapids and Missouri River Railroad Company on January 20, 1865, until 1st June, 1869, but although my relations to the company was then, as stated, somewhat changed, I still corresponded with the officers without intermission until some time in 1870, when, I think, some change was made in the management of the land grant by consolidation with Iowa Railroad Land Company, from which time I become the agent and attorney at Washington for that association, and am now, for all land matters of the roads under its control, including the Cedar Rapids Road. My duties have been various in prosecuting its land claims before the Department in Washington, and sometimes before Congress. I have also selected some of the lands inuring to the Cedar Rapids Road, but not to the other roads of the association. During nearly the whole of the same period I have been agent and attorney, with similar duties, for the Chicago, Rock Island and Pacific, and until very recently for the Burlington and Missouri Road; also, for a short time, of the Dubuque and Sioux City; and am at present in the employ of all the roads named except the Burlington and Missouri. I have formerly acted as agent and attorney here for several roads in other States, with similar duties.

Ques. State what efforts you made to ascertain whether the Department was keeping the even-numbered sections open for homesteads and pre-emption entry within the 15-mile limits, and whether you knew such entries were being allowed outside of the 20-mile limits and within the 15-mile limits. Give a copy of any letter from you to the Department remonstrating against such entries written subsequent to yours of May 12, 1865. Attach copies mark' "A," "B," and "C" of all such letters, and make them part of your deposition.

Ans. In my answer in chief to the first head of interrogatory, I have already explained when and how I learned of the restoration to market of the lands referred to, and of the interfering entries made thereon.

90 I cannot think of anything more to add on that head. The only remedy was to procure counter-instructions, which was done, as declared under the second head of fourth interrogatory-in-chief.

Ques. State when you first learned of the letters of the Commissioner of the General Land Office to the local land office relative to the homestead and pre-emption and private entries, dated Aug. 25, 1864, August 23, 1866, September 21, 1866, and notice and letter of July 5 and 6, 1866, referred to in Burdette letter. You may also state what efforts you made to ascertain what action was being taken by the Department relative to the

adjustment of the plaintiffs' grant and the allowance of homestead and pre-emption entries on the even-numbered sections within the 15-mile limits. State fully, not in a general way, but explicitly and in detail, giving dates. State whether you were in Washington or in Iowa at the time, and attach copies of any communications sent by you to the Department after the one of May 12, 1865, and of any response thereto by the Commissioner or Secretary. Attach them marked for identification.

Ans. In regard to the foregoing questions relating to the letters mentioned, it will be found on reference that I have already answered under the heads of the fourth interrogatory-in-chief. The effect of the instruction of August 23, 1866, was to protect the even-numbered sections inuring to the road in the Sioux City district north of the 20-mile line, which were selected by Mr. Stone in 1866, and were subsequently approved to the road, as explained in my answer in chief. All my acts for the company have been done in Washington; none in Iowa.

Ques. Is it not a fact that none of the land involved in this or others of like nature now pending in Monona County, Iowa, were included in any list of selections made by plaintiff or its agents prior to 1874? If you say it is not a fact, give the number and date of the list in which any part of it was included or all of it, as the case may be, and attach a copy of such list or lists marked for identification.

Ans. As explained in my answer to the fourth interrogatory-in-chief, first head, all the land inuring to the road of the character mentioned were listed by me in 1869, shortly after the selections of the Iowa agents were approved by the Department, and included the lands inuring to the
91 road in Monona County. I have given an abstract with a map from my original list, including B. Herring's entry, and explained why they were struck and their present status.

I have known of the act of July 1, 1866, and instructions of May 30, 1866, from the dates; the second section provides for change of route of one of my agency roads, the B. & M. R. R. R.; the first section, as I understand it, only provided and regulated the location fees of the officers, and the instructions changed the old practice, by requiring the lists of selection for railroads to be filed with the registers and receivers. The remaining questions in this interrogatory, I believe, I have fully answered under the fourth interrogatory direct, first head. As to my source of information, it is derived from the original lists and papers in the General Land Office and partly from my own memoranda and correspondence with officers of the road.

Int. 6. What, if any, proceedings were instituted in the Department or elsewhere, prior to 1874, to which any homesteader or pre-emptioner was a party, and of which he had notice prior to 1874, to test the validity of his entry on an even-numbered section, on the ground that it conflicted with the grant of 1864? Specify each proceedings instituted prior to 1874. Give names and residence of parties having notice prior to that year, the counties in which each party resided, and in which lands entered by him was situated, the date at which the proceeding was instituted, and of which notice was given to the party—the character of the proceedings, and how and when and by whom determined, and the exact source of your information.

Ans. My answer under the fourth interrogatory-in-chief will show what

proceedings were had, and as to particular cases I refer to printed arguments, Exhibit G, attached to depositions of Wm. T. Steiger (see tr., p. 525), and my answer under the second head. I have no copies of notices to the settlers, and can only infer their residences from the tracts claimed.

C. Int. 7. Give the names of all homesteaders and pre-emptioners in Monona County, Iowa, whom you have notified of your claim to the lands entered by him. State how and when such notice was given. Confine your answer to any notification prior to 1874, and state only what you did personally, and not what you may have heard was done from somebody else.

92 Ans. As stated in my last answer, I have given no such notices—it is not my province. Such notices sent from this point would be from the General Land Office, as in other contested cases.

My answers herein are all from personal information, unless otherwise indicated, and from originals and documents in my possession, including my press copies taken from the originals.

C. Int. 9. If in answer to any of the foregoing interrogatories you say that any of the land in controversy, either in this suit or others of a like nature now pending in Monona County, were included in any sections prior to 1874, you may state why, if you know, such tracts were not entered upon the plats and tract-books of the local land office and certified to the plaintiff. Give ground upon which certification was refused and your source of knowledge, and copy of lists containing such tracts, with the endorsements thereon properly marked.

Ans. All my examinations were made on the General Land Office tract-books in Washington. I have never seen the plats and tract-books of the local land office in Iowa; therefore, I am unable to answer this question. (Tr., pp. 464–514.)

Exhibit A, referred to in deposition of Wm. T. Steiger and attached thereto.

WASHINGTON CITY, *January* 20, 1865.

Hon. J. P. USHER, *Secretary of Interior:*

SIR: I have the honor to enclose herewith two certificates of the governor of Iowa, one for 20 miles and the other for 40 miles, making in all sixty miles of completed railroad in conformity to the laws of the State of Iowa and the laws of Congress, commencing at Cedar Rapids, Iowa, and running nearly due west following the 42d parallel of latitude, and for which we are entitled to receive certain lands of Congress. We would state that we have 120 miles of said road constructed, but we present certificates for only sixty miles at this time. The company desire to place these documents on file, and have all things put in shape to enable it to receive and dispose of the lands due them for forty miles of said road at the earliest period. I enclose likewise the resolutions of the board of the Cedar Rapids and Missouri River Railroad Company, appointing the Hon. Oakes Ames and myself their agents to procure the same.

I am, very respectfully, your obedient servant,

JOHN I. BLAIR,
For Himself and Oakes Ames.

93 We desire Mr. Steiger, of Washington, to act as our agent, to assist, and request that he be recognized. (Tr., pp. 516–518.)

Exhibit B, attached to deposition of W. T. Steiger.

CEDAR RAPIDS AND MISSOURI RIVER RAILROAD COMPANY,
Cedar Rapids, Iowa, January 9, 1869.

To WM. T. STEIGER, *Washington City, D. C.:*

DEAR SIR: This company has arranged to dispose of their lands to a land company, and therefore will not require your services any longer for this company, so far as land matters are concerned. It may be that the land company may require your assistance. I shall recommend you to their favorable consideration. When I come to Washington I will see you on the subject of the lands of our other patent.

Yours, etc.,

JOHN I. BLAIR,
Pres't C. R. & M. R. R. R. Co.

(Tr., p. 518.)

Exhibit C, attached to deposition of Wm. T. Steiger.

Notice, No. 711. For restoring to market certain lands heretofore withheld from ordinary private entry for the adjustment of railroad grants in the State of Iowa.

Notice is hereby given that public lands which have heretofore been withheld from ordinary private entry for the adjustment of railroad grants in the State of Iowa, to the aggregate quantity of 641,430.15 acres, held at the double minimum price of $2.50 per acre, and 1,627,014.46 acres held at the ordinary minimum of $1.25, will be restored to market, as follows, viz, on Monday, the 17th day of September, 1866, at the land office at Fort Des Moines, 1,772.41 acres at $2.50 per acre, and 12,385.91 acres at $1.25 per acre.

On Monday, the 1st day of October, 1866, at the land office at Council Bluffs, 18,821.43 acres at $2.50 per acre, and 2,365.98 acres at $1.25 per acre.

On Monday, the 15th day of October, 1866, at the land office at Fort Dodge, 102,907.99 acres at $2.50 per acre, and 145,906.62 acres at $1.25 per acre.

On Monday, the 29th day of October, 1866, at the land office at Sioux City, 517,928.32 acres at $2.50 per acre, and 1,466,355.95 acres at $1.25 per acre.

94 Lists descriptive of the above lands by legal subdivisions will be retained in the respective land offices above mentioned for the inspection of parties wishing to purchase.

Given under my hand at the city of Washington, the 5th day of July, 1866.

[SEAL.] J. M. EDMUNDS,
Commissioner of the General Land Office.

(Tr., p. 519.)

Exhibit D, attached to deposition of Wm. T. Steiger, is a letter from Commissioner to Secretary of Interior, dated May 30, 1865, and is hereinbefore set out in the abstract (p. 41–2), as Exhibit K, attached to Burdette letter. (Tr., pp. 519–522.)

Exhibit E, attached to deposition of Wm. T. Steiger, is heretofore set out in the abstract (p. 41–43), as Exhibit L. of Burdette letter. (Tr., p. 523.)

Exhibit F, referred to in deposition of Wm. Steiger, is attached to transcript (see p. 524), and is a list of lands made up as inuring to the company under said grant by agent of railroad company, and includes the lands of defendants, Benjamin Herring and Daniel T. Culter, together with a map therewith, which list and map is referred to, and will have to be examined in transcript.

Exhibits G and H, referred to by Steiger, are the arguments of Steiger and Wilson in land-office cases before Department (see tr., pp. 525–6), and Exhibit I, in the Burdette letter hereinbefore referred to with exhibits. (Found in ab., pp. 20–61; tr., pp. 527.)

Exhibit K, attached to deposition of Wm. T. Steiger, is as follows:

C. R. & M. R. R. R.,
OFFICE OF SECRETARY AND TREASURER,
Cedar Rapids, Iowa, May 8, 1865.

WM. T. STEIGER, Esq.,
Agent at Washington, D. C.:

DEAR SIR: I have learned that a large number of pre-emption claims are being made at the Fort Des Moines land office to lands included in the grant to this company, many of which claims are entirely invalid as we can clearly show if we have a little time to furnish proof. I have incidentally heard of the following cases, and can give abundant proof of the facts. I will state each case:

Wm. Pitcher claims NW. ¼ Sec. 19, Tp. 84, R. 26; he has an improved farm adjoining this land, but has no improvements on this 40 acres and never had any.

95 Chas. Houton, claims lot 8, Sec. 23, Tp. 84, R. 27; has not lived on the land but two years, and has made no improvements.

McMillen claims E. ½ NE. Sec. 7, Tp. 84, R. 26; has lived on the land but two years, and made no improvements.

Mrs. Milbourn claims SE. of SE. Sec. 11, Tp. 83, R. 27; deserted her claim and gone for one year or more.

Herbert Baltin, SW. of SW. Sec. 3, Tp. 84, R. 27; lives on adjoining land, but has no improvements on this and never had.

Jesse Hall—cannot now give description—facts same as in last above case.

Frank Robinson—cannot give description; bought 40 acres of the State of Iowa, while the land was supposed to be Des Moines River grant, and made improvements; now files a claim for the same 40 acres, and also the adjoining 120 acres. He has no improvements on the 120 and never had.

Allison—have not yet got description; has been on land less than two years.

I hear there are various other cases which I have not yet the facts in regard to.

We would like to have you report to us all the applications for pre-emptions which have been received by the Department at Washington, and have not yet been acted upon; and also notify us of any others which

may hereafter be presented, and also request the Commissioner to delay any decisions upon these cases until we can have a reasonable time to furnish proof that such claims as I have named are invalid.

We understand that a person, to make his claim valid, must have gone on to the land prior to the date of the filing of the line of the road; must also have made improvements, and resided on the land ever since, not having sold or transferred his claim. Is this correct?

Yours, truly,

W. W. WALKER,
Vice-President and Secretary.

(Tr., pp. 528–530.)

J. I. Blair for himself and Oakes Ames, agents, C. R. & M. R. R. R. Approved.

Please refer this matter to the Land Commissioner at Washington.

Exhibit L, attached to deposition of Wm. T. Steiger, is a letter
96 from Steiger to Commissioner, May 12, 1865, is herein before set out as Exhibit 15, on pages 40 and 41 of this abstract. (Tr., p. 530.)

Exhibit M, attached to deposition of W. T. Steiger, is as follows:

WASHINGTON, *August* 22, 1865.

Hon. J. M. EDMUNDS,
Commissioner Land Office:

SIR: Since your circular of the instructions of 7th June, 1865, to registers and receivers of Iowa, forbidding the entry for homesteads and preemptions of lands inuring to three of the most southern railroads therein enumerated, which was predicated on my application of the 12th of May, 1865, also ordering the suspension for future examination and adjudication of any interfering entries of this character, I understand that quite a number of such entries have been reported by these officers in the month of May and the subsequent monthly returns.

I am now advised that the Cedar Rapids and Missouri River Railroad Company have procured testimony materially affecting these interfering claims, some of which have been placed in the hands of Hon. M. Pomeroy, who will file it in the General Land Office, if he has not already done so. I therefore respectfully request that the suspension may be continued for the present, and that I may be advised whenever the cases are taken up, and that in the mean time I may be furnished with a list of the claimants showing the tracts claimed, the names of the witnesses, and the dates of settlement, improvement, and occupancy.

With your permission I will prepare the lists so as to save the time of the clerks.

Respectfully, your obedient servant,

WM. T. STEIGER,
Agent, etc.

(Tr., p. 532.)

Exhibit N, attached to deposition of Wm. T. Steiger, is a letter from Commissioner to registers and receivers, dated September 20, 1866, is herein, before set out as Exhibit 20, in this abstract, p. 45. (Tr., pp. 534–5.)

Plaintiff then offers in evidence deposition of JOHN I. BLAIR, viz:

Name is John I. Blair; over 73; reside at Blairstown, N. J.; am president of bank, president of three railroads, director in iron and steel mills, director in about ten railroads, and attending to my private business, besides I was always director and a member of the executive com-
97 mittee, and president of the C. R. & M. R. R. R. for about five years. I had mainly charge of the location of the new or modified line, and of the construction of the plaintiff's road to the Missouri River. I also took charge, in the main, of the certification of the land granted to the road.

The first seventy miles of said road was located to Marshalltown in 1863; to Nevada, Story County, some time in 1864. From Nevada, west to a point at or near Missouri Valley (so called), the line was located from time to time prior to the 19th day of June, 1865, and from Missouri Valley (so called), to the western terminus of the road on the Missouri River, at a point opposite Omaha, from time to time during the year 1866. The location of the modified line of the road was under the act of June 2, 1864, and was for the purpose of forming a connection with the Iowa branch of the Union Pacific Railroad. The railroad was open for business in the winter and spring of 1867, but was not completed in compliance with the laws until about the first of July, 1867. The first forty miles of road commencing at Cedar Rapids and extending west, were built during the summer and fall of 1861, to a point on Otter Creek. About December 1, 1862, the road was completed to Marshalltown, Iowa. About July 1, 1864, the road was built to Nevada. Some time during March, 1865, the road was constructed to Boone Station, and during the winter and spring of 1867 the road was opened to business, and about July 1, 1867, the road was finally completed to its western terminus on the Missour River, opposite Omaha, a distance from Cedar Rapids of 271.6 miles.

I claimed for the road all the vacant lands within the 15-mile limits of the grant of 1856, and also all the vacant lands within the limits of the modified line under the act of June 2, 1864. Soon after the passage of the act of June 2, 1864, as the agent of the railroads, I made a formal application to the Land Department at Washington for the certification to the railroads of all the vacant lands inuring to the road under the acts of Congress, and from time to time I personally urged the Commissioner of the General Land Office to adjust the grant and certify the lands. I also employed Wm. T. Steiger, of Washington, D. C., as an agent of the company to urge upon the Department the adjustment of the grant.

I caused a map of the line of the general route of the modified line,
98 extending from Cedar Rapids to a point at or near Missouri Valley (so called), to be filed in the Department of the Interior, in 1865. This map was necessarily at some points preliminary in its nature. On the 19th day of December, 1867, I filed a map of the line of the remainder of the modified line, and showing the western terminus of the modified line, as originally contemplated. I asked the Department to attach this map to the map filed July 11, 1865, and have it made a part of the same showing one continuous line from Cedar Rapids to its western terminus opposite Omaha. I also offered to file a map of the modified line showing the continuous line from Cedar Rapids to the western terminus of the road

on the Missouri River, opposite Omaha, in lieu of the maps already filed, but the Commissioner informed me that this would not be necessary, and that the maps filed would be treated as a map of the continuous line of the modified line of road.

I have no personal knowledge whatever of any improvements made or houses built upon the lands in dispute.

Cross-examination:

The map referred to, adopted June 19, 1865, was a map of the line of the general route of the C. R. & M. R. R. R., so far as the same was then located, and was necessarily preliminary in its nature at some points, but it was not intended to be and was not a full and complete map of the entire line of the modified line of plaintiff's road, as the same was at the time and originally contemplated, and subsequently constructed. The remainder of the modified line of the road from Missouri Valley (so called), to a point on the Missouri River, opposite Omaha, was located subsequently to the date of the filing of the map referred to, though this part of the line was originally contemplated and intended to be constructed, and a map of the last part of the modified line was filed by me in the Department at Washington, December 19, 1867.

The point on the Missouri River, indicated on the map, filed July 11, 1865, is not the terminus of the modified line of the Cedar Rapids and Missouri River Railroad, nor was that point ever intended to be the western terminus of the modified line. There is no such terminus referred to in the interrogatory.

The Sioux City and Pacific Railroad is not the Iowa branch of the Union Pacific Railroad. The Sioux City and Pacific connects with the Union Pacific at Fremont, Nebraska.

Cross-int. 3. What were the termini of the Iowa branch of the
99 Union Pacific, as originally located? Give the date of such location, and state whether any changes have been made in the same; and, if so, what direction is the nearest point at which it strikes the Missouri River, as originally located, and at each subsequent change of location?

Ans. I had nothing to do with the location of that road, but I think the eastern terminus of that road was located on east bank of the Missouri River, nearly opposite Omaha.

Cross-int. 4. What line of railroad to the Missouri River past Missouri Valley, and opposite or nearly opposite thereto, did you or plaintiff build other than the so-called Onawa branch, connecting Missouri Valley and California Junction, and the line of the Sioux City and Pacific west from California Junction to the river? Did you or plaintiff ever build any railroad to the Missouri River from Missouri Valley, running parallel or nearly parallel to the so-called Onawa branch, striking said river at point two or three miles south of the line of the Sioux City and Pacific, running west from California Junction, or at about that distance?

Ans. No other road than the main line of the C. R. & M. R. R. R. from Missouri Valley to a point on the Missouri River, opposite to Omaha, was built other than the one named.

Cross-int. 5. Did you or plaintiff ever build any railroad west from Missouri Valley on the route adopted June 19, 1865, and shown by the map filed July, 1865, before mentioned. If so, when, and to what point?

Give the length and direction of the line, and state to what point on the Missouri River it was built. If you attach any map to your deposition, designate such line thereon.

Ans. The line shown on the map filed July 11, 1865, from Missouri Valley (so-called) to the Missouri River, as indicated on said map, is no part of the modified line of the Cedar Rapids and Missouri River Railroad, and was never intended to be any part of it, and the plaintiff never built any road on it.

The Cedar Rapids and Missouri River Railroad formed its connection with the Iowa branch of the Union Pacific at a point on the east bank of the Missouri River opposite Omaha.

Cross-int. 7. What, if any, arrangement did you or plaintiff, or you and others with you, make with the Union Pacific Co., or any corpora-
100 tion or person or persons other than the United States for building the railroad from Missouri Valley past Council Bluffs to the bank of the Missouri River opposite Omaha, or any part of such road, and when was such arrangements, if any, made? What were you or plaintiff, or you and any others with you, to receive for building said railroad, or any part thereof, from the Union Pacific Company, or any other corporation or person or persons other than the United States, and how much received? State fully.

Ans. The C. R. & M. R. R. R. Co. received nothing. The bonuses or considerations named, other than those from the United States, were all given to the Iowa Railway Constructing Company, a company which constructed the line of plaintiff's road from Des Moines River to the western terminus of it on the Missouri River, opposite Omaha, as contractors. These bonuses are mainly given for the sacrifices made by the Railway Constructing Company in pushing through the work to a connection with the Union Pacific Railroad in the short time in which the work was accomplished. Bonuses on this account were received by the Railway Constructing Company from the Union Pacific Company, Chicago and Northwestern Company, the people of Omaha and Council Bluffs. Some of the bonuses were in bonds—some in other forms of obligations, and from the fact that many of the obligations thus given were repudiated by the donors, I am unable to give the amount fully realized by the Iowa Railway Constructing Company from their bonuses.

I caused the map to be filed that was filed July 11, 1865, which map was preliminary in its nature at some points, and also filed a map of the remainder of the modified line of road with the Department at Washington, December 19, 1867, which latter map showed the western terminus of the modified line of plaintiff's road.

Cross-int. 9. State whether you had knowledge of the passage of the act of Congress of July 1, 1864, relating to the selection of railroad land, and of the instructions of the Land Department issued in pursuance thereof by the Commissioner, May 30, 1866, and approved by the Secretary of the Interior June 6, 1866, requiring the companies to select the land claimed by them under their respective grants. State whether the plaintiff, in compliance with said act and instructions, appointed agents to select the land claimed by it under the grant of 1864, and the source of your information.

101 If you say you took any measure to secure the certification of the land in controversy, or in any other of a like nature now pending

in Monona County, state what, if any, measures in the direction required by said act and instructions were taken by you or plaintiff, and give the source of your information upon the subject, and give the date of the selection.

Ans. I had no personal knowledge of the passage of the act referred to, nor of the instructions of the Land Department referred to. I have no knowledge that plaintiff appointed agents in compliance with the law referred to, and I don't understand that the requirements of the law are such as are assumed in the interrogatory.

The object sought in appointing agents was to identify the lands with a view to future certifications, and to assist the Department in adjusting the grant. The measures taken by me to secure the land grant to plaintiff were general in their nature, the details being left to others; I cannot say that I took any special measure to secure the lands in Monona County more than in other counties.

Cross-int. 10. If you say any of the lands referred to in the last interrogation were included in the lists of selections made by plaintiff prior to 1874, give the source of your information—the date and number of the list, and attach a copy of the same to your answer; mark it "Exhibit A."

Ans. I cannot say that the lands in controversy were embraced in lists of selections made prior to 1874. I have no personal knowledge of the selections referred to.

My efforts to secure the adjustment of the grants and certification of the lands to plaintiff were general in their nature, the details being left to others. I presume that whatever was necessary to be done to secure the grant was being done. I did not consider that the acts of Congress imposed upon plaintiff the duty of selecting the lands, though for the purpose of aiding the Department lists were made up by agents appointed by plaintiff for the purpose of identifying the lands, and I can explain what appears to be a cessation of efforts on plaintiff's part only on the theory that I and plaintiff considered it the duty of the Department to certify the lands and presumed it was being done.

I neither have nor had any knowledge of any improvements on the
102 land in controversy. I presumed the Department would adjust the grant to the railroads, as the law required, and set off all the vacant lands inside the granted limits to plaintiff. I did not suppose the Government would dispose of lands other than as the law directed. I am not aware that the plaintiff was waiting during five years. I have heard that the homestead act was passed by Congress, but don't know its provisions.

I appointed an agent at Washington to look after the adjustment of the grant to plaintiff, and I had numerous interviews with the officers of the Land Department, and urged the certification of the granted lands. I don't understand that the Department refused to certify the lands. I presume the failure to adjust the grant was owing to the press of business at the Department and the change of officers.

Cross-int. 14. If you say you claimed under the act of June, 1864, any lands except for roads actually built from Cedar Rapids west, you will please state whether you entered into a contract with Platt Smith, attorney, a copy of which is hereby attached (here Commissioner will please hand witness accompanying copy of contract), and mark said copy "Exhibit C," and make it a part of your deposition. State whether the lands then

claimed by plaintiff, including the Des Moines River land, which it did not abandon until the decision of United States Supreme Court of the Plaintiff vs. The Des Moines Company and Williams vs. Baker, in 1872, were not amply sufficient, excluding the lands in controversy, to give plaintiff six sections per mile from Anamosa to the Missouri River. What kind of earnest effort was it in which it was understood that both parties should unite to draw lands on the Anamosa line? Was plaintiff in need of help to select the lands or an act of Congress? Did you suppose at that time that there were 46,000 acres of public land along the line from Anamosa to Cedar Rapids? What was meant by the stipulation that it was the intent to draw lands for the road from Anamosa to the Missouri River, if, under existing grants, you suppose plaintiff entitled to draw lands from the Mississippi River to the Missouri River?

State further what was meant by the condition that the parties should be able to hold for and on account of the construction of the road from Anamosa to Cedar Rapids at least as much land as forty-six thousand acres.

103 Ans. I did enter into an agreement with Platt Smith, attorney, and cannot state whether the copy presented is a true copy or not, not having the original. As I understand the matter, if the Des Moines River lands had been included it might be sufficient to give plaintiff six sections to the mile from Anamosa west. As to the conditions in the agreement inquired about I neither had then nor now any particular interest in them, except in the last clause of said agreement, the balance of the agreement having been drawn up by Platt Smith. This deponent added all after the word "provided," and so long as the Cedar Rapids and Missouri River Railroad was not bound to convey lands for the road from Anamosa to Cedar Rapids, unless it obtained 46,000 acres for that portion of the road, the other conditions of the contract concerned me very little. (Tr., pp. 536–564.)

Exhibit C, attached to commission and referred to in 14th cross-interrogatory to Blair, is as follows:

Resolved, That the contract (so called) contained in letters and papers between the president of this company and Hon. Platt Smith, attorney for certain owners of a judgment against the late Iowa Central Company, and as claimed by said Smith, concerning the land granted to the company, is a fair and just basis of compromise of said claim and judgment, and the president is authorized to settle the same in conformity with the spirit of the contract referred to, with the right also to adjust, in his discretion, any difference of opinion that may be between the parties relating to the right of way or franchise between Anamosa and Lyons, it being understood that both parties shall unite in all earnest effort to draw the lands on the Anamosa line by which this contract can be satisfied. The matter is to be settled as follows: The 46,000 acres of land shall be taken from the land grant remaining undisposed of and to which the title is undisputed, beginning at the township line north of Mapleton in Monona County, on the northerly side of the surveyed line of the Iowa Central Railroad, taking odd and even numbered sections to which either of the acts of Congress has given title, and running thence east only on the northerly side of said line for quantity, taking all lands of the grant to which the title is undisputed.

The decree is to be assigned to John I. Blair. The question of old grade to be left to future consideration. The parties agree to join in doing all acts which may be necessary to complete the title, which shall be transferred to Platt Smith, as attorney, or to such other parties as may be mutually satisfactory, it being understood that the intent is to draw lands for the road from Anamosa to the Missouri River. This shall be a full and final settlement of all claims and demands between the parties, provided this settlement is on this condition, that the parties shall be able to hold for and on account of the construction of the road from Anamosa to Cedar Rapids at least as much land as 46,000 acres.

104

THE C. R. & M. R. R. R. CO.,
By JOHN I. BLAIR,
PLATT SMITH,
Attorneys.

CEDAR RAPIDS, *June* 28, 1867.
(Tr., pp. 563–4.)

By stipulation of parties the statement of case and opinion in cases of Willams vs. Baker, and The C. R. & M. R. R. R. Co. vs. Des Moines Navigation and Improvement Co., found in 17 Wallace, p. 144, shall be competent evidence of the matters therein stated (see tr., 141), and said cases hold that neither the State of Iowa nor the railroad company for whose benefit the grant of 1856 was made took any title by that act to the lands then claimed to belong to the Des Moines grant of 1846, within the five-mile limit on each side of the Des Moines River, and that by the joint resolution of 1861 and the act of 1862 the State of Iowa did receive the title for the use of those to whom she had sold them as part of that grant. (Tr., pp. 566–583.)

Plaintiff next offers in evidence, section 10, act 2, Congress approved March 3, 1865:

SEC. 10. And be it further enacted, That the time mentioned in an act entitled "An act making a grant of lands to the State of Iowa in alternate sections to aid in the construction of certain railroads in said State," for the completion of the railroads named in said act, be, and the same is hereby, extended for two years. (Tr., p. 584.)

By stipulation of parties (see tr., p. 141), the Burdette letter herein before set out (abstract, pp. 50–61) is made competent evidence of the matters therein stated, and may be introduced by either party.

By stipulation of the parties (see tp., 140–141), any map introduced by either party, certified by Commissioner of General Land Office, shall be competent evidence of the matters embraced in said certificates.

105

DEFENDANT'S TESTIMONY.

Defendant offers in evidence certified copy of homestead entries. (Objected to by plaintiff as incompetent, irrelevant, and immaterial.) (See tr., Exhibit 40, pp. 586.) This exhibit includes a number of homestead entries, but in this abstract is inserted only those in controversy, and is certified to by register and receiver at United States land office, at Des Moines, Iowa, September 10, 1877, as being a complete copy of the book of original homestead entr'es kept at Council Bluffs land office, so far as they are mentioned and narrated therein, and said evidence is as follows:

Register of entries made at the land office at Council Bluffs, Iowa, under the homestead laws.

No. of application.	Date of application.	Part of section.	No. of Sec.	No. of Tp.	Range.	Quantity. Acres.	Quantity. Hund'ths.	Name of applicant.	Remarks.
326	Aug. 17, '66. ..	N ½ SE.....	4	85	42	80	.....	John T. Lake.....	Proved up May 13, 1873.
307	June 12, '65 ..	N. ½ NE.....	6	85	42	79	76	Lewis Iddings... ..	Entered December 26, 1871.
388	July 2, 1867...	E ½ SW.....	12	85	43	80	... ..	Q. A. Wooster.....	Canceled by com'r's letter October 5, 1869. "Note."—(Entered with cash, No. 130–44 by Catharine M. Wooster. See tract book.)
253	March 20, '65...	SE. SW. & SW. SE	24	85	40	84	.....	David Greenstreef..	Entered Feb. 28, '72. Changed to SE. NW. and SW. NE. See com'r's letter June 5, 1866. Change approved. See com'r's letter August 2, '66.
337	Aug. 24, '66....	S. ½ SW	6	84	45	78	19	Patrick Dundon.....	Proved April 11, '72.
314	Aug. 13, '66 ...	S. ½ NW.....	10	84	46	80	.....	Daniel C. Cutler....	Proved up November 8, 1 72.
292	May 31, '65	E. ½ NE.....	20	84	46	80	.....	Benj. Herring . ..	Entered January 4, 1871. Patent April 1, 1872.
291	May 31, '65	W. ½ NE.....	20	84	46	80	.....	Elijah W. Brooks....	Entered November 28, 1870.
432	January 4, '68.	N. ½ NW.....	28	84	46	80	.....	Wm. T. Boyd.....	Proved up November 8, 1872.

107 Defendant offered in evidence tract book of the United States land office. (Objected to by plaintiff as incompetent and immaterial.) (See tr., Exhibit 41, pp. 583–608.)

The exhibit includes a number of tracts, but in this abstract is inserted only those lands in controversy, and it is certified to by register and receiver at United States land office at Des Moines, Iowa, September 10, 1877, as containing a full, true and complete copy of all the entries, notations, descriptions and memoranda on the tract books of said office, which were formerly at Council Bluffs, Iowa, so far as they pertain to the parcels or tracts mentioned and described therein, and said evidence is as follows:

Part of section.	Section.	Tp.	Range.	Acres.	H'ndths.	Rate per acre. $	Rate per acre. Cts.	Purchaser.	Date of sale.	No. of receipt, etc.	To whom patented.	Date of patent.	Where recorded. Vol.	Where recorded. Page.
N. ½ SE	4	85	42	80	....	2	50	John T. Lake	Aug. 17, '66	326	John T. Lake	April 10, '74	1	178
N. ½ NE	6	85	42	79	76	2	50	Lewis Iddings	June 12, '65	307	Lewis Iddings	Jan. 15, '73	1	140
E. ½ SW	12	85	43	80	....	2	50	Q. A. Wooster	July 2, '67	388	Canceled	See Com'r	L'tr	Oc. 5, '69
E. ½ SW	12	85	43	80	....	2	50	Cath. M. Wooster	Oct. 18, '69	13,044	Cath. M. Wooster	May 16, '70	3	191
SE. NW. & SW. NE	24	85	44	80		2	50	David Greenstreet	Mar. 20, '65	253	David Greenstreet	Jan. 15, 73	1	149
S. ½ SW	6	84	45	80		2	50	Patrick Dundon	Aug. 24, '66	337	Patrick Dundon	April 10, '74	1	152
S. ½ NW	10	84	46	80	....	2	50	Daniel T. Cutler	Aug. 13, '66	314	Daniel T. Cutler	Jan. 15, '73	1	162
E. ½ NE	20	84	46	80	....	2	50	Benj. Herring	May 31, '65	292	Benj. Herring	April 1, '72	1	126
W. ½ NE	20	84	46	80	....	2	50	Elijah W. Brooks	May 31, '65	291	Elijah W. Brooks	July 1, '71	1	115
N. ½ NW	28	84	46	80	....	2	50	Wm. T. Boyd	June 4, '68	432	Wm. T. Boyd	Jan. 15, '73	1	158

109 Defendant offered in evidence certified copy of final proof of homesteads. (Objected to by plaintiff as incompetent and immaterial.) (See tr., Exhibit 42, tr. pp. 609–19.)

The exhibit includes a number of tracts, but in this abstract is inserted only the lands in controversy; this exhibit is certified by register and receiver of United States land office, Des Moines, Iowa, September 10, 1877, as containing a complete copy of original book of final proof, as kept at Council Bluffs, Iowa, then on file at Des Moines land office, as set forth therein, and said evidence is as follows:

No of certificates.	Date of certificate.	Part of sec.	No. of Sec.	No. of Tp.	Range.	Acres.	100ths.	Name of applicant.	Residence.	No. of orig. applic'tn.	Commissions.	Price per acre. $	cents.
182	May 13, '73	N. ½ SE	4	85	42	80	....	John T. Lake	Monona County, Ia.	326	4 00	2	50
141	Dec. 20, '71	N. ½ NE	6	85	42	80	....	Lewis Iddings	" "	307	4 00	2	50
150	Feb. 28, '72	SE. NW. SW. NE.	24	85	44	80	.	David Greenstreet	" "	353	4 00	2	50
153	April 18, '72	S. ½ SW	6	84	45	78	19	Patrick Dundon	" "	337	4 00	2	50
165	Nov. 8, '72	S. ½ NW	10	84	46	80	....	Daniel T. Cutler	" "	314	4 00	2	50
126	Jan. 4, '71	E. ½ NE	20	84	46	80	....	Benj. Herring	" "	292	4 00	2	50
120	July 26, '70	W. ½ NE	20	84	46	80	....	Elijah W. Brooks	" "	291	4 00	2	50
161	Nov. 8, '72	N. ½ NW	28	84	46	80	....	Wm. T. Boyd	" "	432	4 00	2	50

111 Defendant offers in evidence certified copy of railroad selections made by plaintiff in Monona County. (Objected to by plaintiff as incompetent, immaterial, and irrelevant.) This exhibit is certified to by register and receiver at Des Moines, Iowa, September 10, 1877, as containing a full, true, and perfect copy of all selections of railroad lands in the sections, townships, and ranges as therein narrated and set forth (and is Exhibit 43 attached to tr., pp. 629–634).

This exhibit shows selections by C. R. & M. R. R. Co. in Monona County, Iowa, through their agents, April 6, 1875, and certified to by Interior Department in supplement list No. 86, within 6-mile limits of 160 acres; September 2, 1872, certified by Department of Interior, in supplement list 78, within 20-mile limits, 400 acres; November 16, 1875, certified by Department of Interior, in supplement list 89, 680 acres; and shows selection by Wm. T. Steiger, agent for railroad company, October 7, 1875, of 400 acres; shows selections made by C. H. Street, agent for railroad company, and approved August 15, 1876, of 37,220.40 acres; and a large number of selections made by Wm. Ragan, agent for railroad company, March 16, 1876, including the lands in controversy, marked on said exhibit as rejected, as not being vacant public lands.

Defendant offers in evidence Exhibit No. 44 (attached to transcript, pp. 635–8), being a certified copy of list of vacant lands in Monona County, transmitted with letter of November, 1867, and is certified to by register and receiver of United States land office. (Objected to by plaintiff as incompetent, immaterial, and irrelevant.) Said exhibit is marked, "List of vacant lands, November 11, 1867, at $2.50 per acre, Council Bluffs district, and contains all the tracts in controversy in the action except N. ½ NE., 6, 85, 42, claimed by defendant Lewis Iddings; E. ½ NE., 20, 84, 46, claimed by defendant Benj. Herring; W. ½ NE., 20, 84, 46, claimed by defendant Elijah W. Brooks; and N. ½ of NW. ¼, 28, 84, 46, claimed by defendant Wm. T. Boyd. Said tracts are not included in said list.

Defendant offered in evidence Exhibit 45, attached to transcript, certified copy of letter from Commissioner of General Land Office to register land office of Council Bluffs, dated December 8, 1864, certified to
112 by register and receiver at Des Moines land office (objected to by plaintiff as incompetent, immaterial, and irrelevant), viz:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
December 8, 1864.

REGISTER LAND OFFICE,
Council Bluffs, Ia.:

SIR: In reply to your letter of the 23d ult., I have to state that selections of public lands by railroad companies, under act June, 1864, of the even-numbered or indemnity sections within the limits of the several roads provided for in said act, will take effect from the time of filing such selections in the local land office. The odd-numbered sections in the limits of the several roads inure to the State or companies from date of survey in the field of the line of road.

JOS. S. WILSON,
Acting Commissioner.

(Tr., pp. 639–40.)

Defendant offered in evidence Exhibit 46 (attached to transcript, pp. 641–2), certified copy of letter from Commissioner of General Land Office to register and receiver of land office, Council Bluffs, dated August 25, 1864, and certified to by register and receiver at Des Moines land office (objected to as above), as follows:

GENERAL LAND OFFICE,
August 25, 1864.

GENTLEMEN: In pursuance of instructions from the Secretary of Interior, under date of the 24th inst., the order of the 16th of June last, withdrawing from sale the public lands in Iowa, is modified so that entries may be made under the homestead and pre-emption laws as before that order was issued, and you will allow such entries to be made accordingly.

JOS. S. WILSON,
Acting Commissioner.

REGISTER and RECEIVER,
Council Bluffs, Iowa.

Defendant offered in evidence Exhibit 47 (attached to transcript, pp. 643–4), certified copy telegraphic dispatch from Acting Commissioner of General Land Office to register and receiver, Council Bluffs, dated August 26, 1864, certified to by register and receiver at United States land office, Des Moines, Iowa (objected to as above), and is as follows:

COUNCIL BLUFFS, *August* 27, 1864.
(By telegraph from Washington, Aug. 26, '64.)

To REGISTER and RECEIVER,
Council Bluffs, Ia.:

The lands in your district are to be treated as open to homestead and pre-emption.

JOS. S. WILSON,
Acting Commissioner.

113 Defendant offers in evidence certified copy of letter from Commissioner of General Land Office to register and receiver at Council Bluffs, dated July 6, 1866 (attached to transcript as Exhibit 48), and hereinbefore set out in plaintiff's testimony as Exhibit 18. (Found on pp. 43–4 of this abstract, tr., pp. 647–8.)

Defendant offers in evidence certified copy of letter from Commissioner of General Land Office to register and receiver, Council Bluffs, dated November 11, 1867 (attached to transcript as Exhibit 49), and herein before set out as Exhibit 22. (Found on p. 46 of this abstract, tr., pp. 649–50.)

Defendant offers in evidence certified copy of notice No. 711 from Land Office (attached to transcript as Exhibit 50), and herein before set out as Exhibit C, attached to deposition of Wm. T. Steiger. (Found on page 93–4 of this abstract, tr., pp. 651–4.)

Defendant offers in evidence certified copy of letter from Commissioner to register at Council Bluffs, Iowa, dated November 1, 1867 (attached to transcript as Exhibit 51), certified to by register and receiver at Des Moines land office (objected to by plaintiff as above), and is as follows:

DEPARTMENT OF INTERIOR,
GENERAL LAND OFFICE, *November* 1, 1867.

SIR: Referring to your letter of the 21st ult. I have to state that the newspaper, Council Bluffs Weekly Nonpariel, therein alluded to as embracing a public notice of the time upon which certain lands therein described, situated in your district, will be brought into market, has not reached here. You will be pleased to forward a copy of it by return mail.

In your answer to this letter will be pleased to refer to it as "C" by its date.

JOS. S. WILSON, *Commissioner.*

FRANK STREET,
Register at Council Bluffs, Ia.

(Tr., pp. 655–6.)

Defendant offers in evidence certified copy of letter from Commissioner of Land Office to register and receiver, Council Bluffs, as follows:

DEPARTMENT OF INTERIOR,
GENERAL LAND OFFICE, *August* 5, 1867.

GENTLEMEN: In reference to the lands in your district which were withdrawn from private entry for railroad purposes the 23d of June,
114 1864, ordered to be restored thereto on October 1, 1866, per printed notice No. 711, and the restoration of which was postponed by order of the Secretary of the Interior for one year from July 5, 1866, the date of the notice, as per our letter to your office of September 21, 1866, I have to state that the period of postponement expired on the 5th ultimo, but the lands will not be subject to ordinary private entry until the usual thirty days' public notice thereof shall be given by advertisement in some newspaper of general circulation in your district. This you will do without delay, and forward a copy of the newspaper containing the advertisement to this office.

JOS. S. WILSON.

REGISTER and RECEIVER,
Council Bluffs.

(Tr., p. 645.)

Defendant offered in evidence certified copy of letter from Commissioner of General Land Office to Frank Street, register and receiver at Council Bluffs, Ia., dated October 21, 1867 (attached to transcript as Exhibit 52), certified to by register and receiver United States land office at Council Bluffs, Ia.

(Objected to as above.)

DEPARTMENT OF INTERIOR,
GENERAL LAND OFFICE, *October* 21, 1867.

GENTLEMEN: In answer to your letter of the 10th inst. respecting the destruction by fire of certain public property, etc., pertaining to your land district, I have to state that duplicates of the lists of swamp and railroad selections are now being prepared, and will be forwarded to you at the

earliest date practicable. Upon your advising this office of the particular kind of blanks required they will be promptly transmitted.

JOS. S. WILSON, *Commissioner.*

REGISTER and RECEIVER,
Council Bluffs, Ia.

(Tr., pp. 657–8.)

Defendant offered in evidence certified copy of letter from Commissioner of General Land Office to register and receiver of land office at Council Bluffs, Ia., dated June 16, 1864 (attached to transcript as Exhibit 53), and certified to by register and receiver at United States land office, Council Bluffs, and is herein before introduced by plaintiff and set out as Exhibit 39. (Found on p. 39 of abstract, tr., pp. 659–60.)

Defendant offered in evidence certified copy of petition in equity of The C. R. & M. R. R. R. vs. Woodbury County, B. F. Smith, county treasurer, J. S. Easly, John F. Peterson, and J. C. C. Hoskins, filed
115 in Woodbury County district court March 18, 1869, and amendment thereto, filed July 22, 1869 (attached to transcript as Exhibit 54; objected to by plaintiff as incompetent, immaterial, and irrelevant), and is as follows:

That said C. R. & M. R. R. R. is a corporation under laws of Iowa; that it has constructed its main line of railroad from Cedar Rapids, in Linn County, to Missouri River near Council Bluffs. That the different parts of said line were constructed from 1861 to 1867, as shown by statement attached to petition as Exhibit A. That by the act of Congress of May 15, 1856, and the act of Iowa legislature March 26, 1860, petitioner became entitled upon building said road, and to aid in its construction a quantity of United States public lands equal to six sections to the mile for each mile of its road built in accordance with said laws, provided such amount of lands of the kind named should be found in the odd-numbered sections lying within 15 miles of said road as laid down on the map thereof, filed in General Land Office of the United States by the Iowa Central Air Line Railroad Company about 1857. That the amount of six sections to the mile for each mile of the road of the kind of land described was not found within 15 miles of said railroad in odd-numbered sections, and Congress, by act of June 2, 1864, enacted that petitioner might modify the uncompleted portion of its line, as shown by the map aforesaid, and that "the Secretary of the Interior shall reserve and cause to be certified and conveyed to petitioner from time to time as the work progresses on main line out of any public lands now belonging to the United States not sold, reserved, or otherwise disposed of, or to which a pre-emption right or right of homestead settlement has not attached, and on which a bona fide settlement and improvement has not been made under color of title from the United States or from the State of Iowa within 15 miles of original main line, an amount of land equal to that originally authorized to be granted to aid said road by said act, to which this is an amendment, and if the amount of land per mile granted by said original act to aid said railroad shall not be found within the limits of the fifteen miles therein prescribed, then such selection may be made along said modified line and connecting branch within twenty miles thereof."

That under instructions issued by Commissioner of Land Office to regis-

ters and receivers of land offices, dated May 30, 1866, and ap-
116 proved by Acting Secretary of Interior June 6, 1866, petitioner was required to appoint agents to select the lands claimed by it in the several land districts of Iowa accruing to it under act of June 2, 1864.

That in accordance with said instructions petitioner appointed agents to make such selections in the four land districts of Iowa through which said railroad runs, and selections were made by such agents and certified by register and receiver in 1866, as follows:

In Des Moines district, 21,832.58 acres.

In the Fort Dodge district, 38,764.54 acres.

In the Council Bluffs district, 139,365.74 acres.

In the Sioux City district, 191,438.62 acres.

The amount previously certified to State to aid said railroad and inuring to petitioner under act of general assembly March 26, 1860, is about 775,444.19 acres, and this amount includes 20 sections sold by Iowa Central Air Line Railroad Company before passage of act March 26, 1860, and also includes what is commonly called Des Moines River lands, certified about April 7, 1873, by Commissioner and Secretary of Interior as inuring to petitioner under act of May 15, 1856, amounting to about 109,000 acres, but held by Supreme Court of United States in case of Wolcottvs. Des Moines Navigation and Railroad Company (5 Wallace, 681), not to have passed to State under act of May 15, 1856.

That of the said selections made in 1866 there were certified to petitioner by certificate of Commissioner of Land Office July 11, '68, approved certificate of Secretary of Interior, dated July 17, 1868, about 136,416.41 acres of said lands in Council Bluffs district, and in Sioux City land district there have been certified to petitioner of said selections under act of June 2, 1864, 190,305.30 acres, and under act of May 15, 1856, 640 acres, certified under date of July 17, 1868, by Commissioner and by Secretary of Interior July 18, 1868. Petitioner avers on information that the lands certified as aforesaid included all the lands in said Council Bluffs and Sioux City districts, which the Secretary of Interior will or ought to certify to petitioner under act of June 2, 1864.

Avers on information that up to the present time no definite or final action has been had by the Secretary of the Interior upon said lists of land selected in Des Moines and Fort Dodge land districts, and that there are lands in said two districts, and included in said lists, which will be certified to petitioner under act of June 2, 1864, when said Secretary shall finally act thereon.

117 Petitioner appends to petition as Exhibits B, C, and D, copies of lists of lands in Sioux City district, certified as aforesaid.

That by reason of the premises and certification by the Secretary, as shown by said lists, the lands in Exhibit B, C, and D are the land" of petionor, and petitioner has had ownership and title thereto since the date of said certificate, July 18, 1868, and before the making of said certificate said lands were the lands of the United States, and that none of said lands in said Exhibits B, C, and D had ever been certified or conveyed by the United States to the State or to petitioner before the making of said certificates, and that previous to July 18, 1868, petitioner never exercised any acts of ownership over said lands, nor asserted any title thereto, either by offering the same for sale or otherwise.

The petitioner then proceeds to state that the county of Woodbury assessed and levied taxes on a portion of said lands described in Exhibits B, C, and D for 1867 and 1868, and the same were sold by defendant Smith as county treasurer, in October, 1868, for taxes of 1867, and that the defendants, Easly, Peterson, Hoskins, purchased portions of said land at said tax sale, and petitioner claims and alleges that said lands were not taxable till 1869, and asks that the said sale be set aside and canceled, and certificates issued thereunto canceled, and the levy of taxes for 1868 be set aside and canceled. (Tr., pp. 661–76.)

Exhibit A, attached to the petition, is as follows:

A statement of progress of the C. R. & M. R. R. R., and the times at which the different portions were finished. The act of the State giving the lands to the C. R. & M. R. R. R. was passed March 26, 1860.

The year of 1860 was spent in making surveys and locating line to Marshalltown.

December 1, 1861, 40 miles of road was completed to Otter Creek Station, now Chelsea.

December 12, 1862, 70 miles completed to Marshalltown.

In 1863, road completed to State Center, 85 miles.

July, 1864, finished to Nevada, about 100 miles from Cedar Rapids.

In March, 1865, road was finished to Boone, about 122 miles from Cedar Rapids.

In April, 1866, Des Moines River bridge was completed; track
118 laid to west bank of Des Moines River, about 128 miles from Cedar Rapids.

January 1, 1867, the road was completed to Honey Creek Station, sixteen miles from Council Bluffs, about 252 miles west of Cedar Rapids.

January 22, 1867, road was finished to Council Bluffs, about 268 miles from Cedar Rapids.

February 5, 1867, the whole line was laid and operated to the bank of the Missouri River, opposite Omaha, 271.6 miles from Cedar Rapids.

In 1863, 1864, and 1865, the railroad from Marion to Cedar Rapids, about six miles, was built by the Dubuque and Southwestern Railroad Company, under an arrangement between that company and the C. R. & M. R. R. R.

In the summer of 1867, about six miles of railroad, called the Onawa branch, connecting main line of C. R. & M. R. R. R. at Missouri Valley with Sioux City and Pacific Railroad, at California Junction.

The Lyons branch, owing to the opposition of the city of Clinton, and divers injunctions issued at the suit of said city, was not built until the fall of 1868; the track of road between cities of Lyons and Clinton laid late in fall of 1868, but owing to frost, track was not completed, and is not yet entirely finished, but is now nearly completed, and is 2½ miles long. (Tr., pp. 677–9.)

Exhibit B, attached to petition, is a supplemental list of lands selected by C. R. & M. R. R. R. in Sioux City district, under act of May 15, 1856, six-mile limits, dated July 17, 1868. (Tr., pp. 679–82.)

Exhibit C, attached to petition, is a supplemental list of lands selected by C. R. & M. R. R. R. under act of May 15, 1856, in Sioux City district, outside of six and within fifteen-mile limits, dated July 17, 1868. (Tr., pp. 683–6.)

Exhibit D is a supplemental list of lands selected by C. R. & M. R. R. R. Co. in Sioux City land district, under act June 2, 1864, within fifteen-mile limits, dated July 17, 1868. (Tr., pp. 689–708.)

The amendment to said petition, filed July 22, 1869, was as follows:

That since petition was filed the Secretary of the Interior has
119 taken final action upon the lists of lands in Fort Dodge and Des Moines districts, and certified to complainant in Des Moines District 14,680.56 acres of land so selected, and in Fort Dodge district 3,515.91 acres of the lands embraced in said selected lists, and no more. (See Tr., p. 709.)

Defendant offered in evidence certified copy of circular of instruction of the United States Land Department (as Exhibit 55, attached to transcript, pp. 714–38), certified to by clerk of district court of Woodbury County, Iowa, as complete copy of same as attached to papers in case of Cedar Rapids and Missouri River Railroad vs. Woodbury County et al. (objected to by plaintiff as incompetent, immaterial, and irrelevant), and is as follows:

[Circular No. 9.]

Grants from Congress to States and corporations.

DEPARTMENT OF INTERIOR,
GENERAL LAND OFFICE, *May* 30, 1866.

GENTLEMEN: By the first section of the act of Congress approved July 1, 1864 (Statutes 1863–'4, page 335, chap. 198), it is provided that from and after the passage of that act the location of lands by States and corporations under grants from Congress for railroads and for other purposes (except for agricultural colleges), the registers and receivers of the land offices for the several States and Territories in the districts where such lands may be located, for their services therein, shall be entitled to receive a fee of $1 for each final location of 160 acres, to be paid by the State or corporation making such location, the same to be accounted for in the same manner as fees, etc., on warrants and pre-emption locations, with limitation as to maximum of salary prescribed by existing laws, in accordance with such instructions as shall be given by Commissioner of General Land Office.

1. Under this law the registers and receivers are each entitled to receive $1 fee for each final location of 160 acres, or any quantity approximate thereto when deficit is less than 40 acres.

2. When the several quantities shall have been definitely ascertained by you as to inure to the grant, as hereinafter prescribed, the fees will be due.

3. The State, through its grantee, or the grantee, as the case may be,
is required to file with register and receiver descriptive lists of the
120 tracts of land claimed as inuring under the grant within section of miles each, along the line of route on both sides thereof, to be dated and verified by the signature of selecting agents. (For agent's certificate to be attached to each list, see form A.) The party appearing as the agent of the grantee must file with register and receiver written and satisfactory evidence, under seal, showing authority to act. In preparation of

lists register and receiver will afford agent all reasonable facilities, taking care not to interrupt current public business. The lists must be carefully examined by register and receiver; their accuracy tested by the plats and records of their office; when so examined and tested and found correct in all respects to be a final location, and you will, on payment of the fee, so certify at the foot of each list according to form B.

After lists have been examined and your certificate attached, same will be consecutively numbered from No. 1, for each railroad or separate grant. Upon payment of fees and certification of lists the register will post selections in tract-book after following manner: "Selected 186 , by A. B., agent for the railroad company, act , list No. ," and on the plats he will mark the selected tracts "R. R."

After selections are posted and marked, the lists will be transmitted to this office with the evidence of agent's appointment.

4. The fees will be due in all cases where the service may be rendered subsequent to act of 1864.

5. The recorder will account for the fees paid in in his monthly and quarterly accounts, setting forth in the same the particular case or cases on which the fees accrued, giving name of road, number and date of list for which they were paid.

6. By joint resolution No. 10, of January 30, 1865, mineral lands are not embraced in the grant made at the first session of the 38th Congress, unless otherwise specially provided in the act or acts making the grants.

PACIFIC RAILROADS.

Acts approved July 1, 1862, and July 2, 1864.

7. By section 21 of the latter act these companies are required to pay the cost of surveying, selecting, and conveying the lands, in addition to the fee, exacted by act of July 1, 1864, before mentioned. To ascertain the costs of surveying, which includes both surveying in the field and
121 office work, the company will apply to the surveyor-general of the State or Territory in which the lands are situated. Upon ascertaining the sum due for selection or selections of road, for which selections have been or are to be made, a deposit of those sums must be made to the credit of the Treasurer of the United States with an authorized depository. The duplicate certificate of deposit must be filed with surveyor-general, whereupon he will transmit to register and receiver of proper land office his certificate of payment, specifying amount for surveying and office work, as per form C.

The surveyor-general certificate, together with duplicate certificate of deposit, and evidence of agent's appointment, must accompany the lists of selections when transmitted by you to this office.

8. Herewith is a form of title page to be prefixed to lists of selections. Let me call your special attention to the necessity of great care in the examination and testing of these lists, so that conflicts may be avoided and improper selections excluded, and that the verified schedules may be accurate, and avoiding embarrassment and delay to all concerned.

When the verified lists are received at the General Land Office, prepared and certified, as above required, such definite action as the law requires will be here taken with a view to invest grantee with a complete

title. These instructions will supercede those of the circulars of November 14 and December, 1864.

Please acknowledge receipt of this circular, giving date of reception.

J. M. EDMUNDS,
Commissioner.

To REGISTER and RECEIVER of the U. S. Land Office.

DEPARTMENT OF INTERIOR,
Washington, D. C., June 6, 1866.

The foregoing rules are approved.

W. T. OTTO,
Acting Commissioner.

(Tr., pp. 714–22.)

Form A, attached to this circular, is form of agent's certificate to lists. (Tr., p. 723.)

Form B, attached to this circular, is form of certificate by register and receiver to selection lists. (Tr., pp. 724–5.)

Form C, attached to this circular, is form of surveyor-gen-
122 eral's certificate of payment of fees for survey, etc. (Tr., pp. 725–736.)

Defendant offered in evidence act of Congress of July 1, 1864, with reference to railroad selections, viz:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this act, in the location of lands by States and corporations, under grants from Congress for railroads and other purposes (except for agricultural colleges), the registers and receivers of the land offices of the several States and Territories, in the districts where such lands may be located, for their services therein, shall be entitled to receive $1 for each final location of 160 acres, to be paid by the State or corporation making such location, the same to be accounted for in the same manner as fees and commissions on warrants and pre-emption locations, with limitations as to maximums of salary prescribed by existing laws, in accordance with such instructions as shall be given by the Commissioner of General Land Office. (Tr., p. 738½.)

Defendant offered in evidence a certified copy of record of deeds from C. R. & M. R. R. R. to I. R. R. L. C., attached to transcript Exhibits 56 and 57. (Objected to by plaintiffs as incompetent, irrelevant, and immaterial.)

These exhibits are two quitclaim deeds, made September 15, 1869, by C. R. & M. R. R. R. to I. R. R. L. Co. for lands in Monona County, described in said deeds, and also conveying by its terms "all other lands in said county of Monona, owned by said C. R. & M. R. R. R., which they have received or may hereafter receive, or become entitled to from the United States Government, or State of Iowa or any of the counties of said State, in consideration of constructing or building said C. R. & M. R. R. R., or its branches, excepting and reserving, however, unto said first party all lands which it has sold or contracted to sell previous to date of deed; and reserving right of way to first party of 100 feet in width

where line of road has been or may hereafter be located over and upon said lands." (Tr., pp. 739–758.)

Defendant offered in evidence map showing the location of Air Line Central Railroad and Cedar Rapids and Missouri River Railroad, attached to transcript as Exhibit 58. (Objected to by plaintiff for the reason
123 that it has not a proper certificate in this, that it is not under seal of Commissioner General Land Office. Second, does not purport to be a copy of any map on file in his office. Third, that the certificate is with reference to a matter with regard to which Commissioner cannot certify, and for that reason it is incompetent, irrelevant, and immaterial.)

Defendant offered said map under the stipulation herein before referred to in abstract that when a map is introduced by either party, certified by Commissioner of Land Office, it shall be competent for all the matters embraced in said certificates. (Said map is attached to transcript as Exhibit 58, and is made a part hereof and referred to, but owing to the nature of the testimony cannot be set out in abstract.)

Defendant offered in evidence the Burdette letter or pamphlet and exhibits thereto (attached to transcript as Exhibit 59). The Burdette letter was also introduced by plaintiff, and is set out in full in this abstract, commencing on p. 50. (Tr., pp. 760–770.)

Defendant offered in evidence Lippencot letter and exhibits attached, which, by stipulation of parties (tr., p. 141), was made competent evidence of the matters stated, and may be introduced by either party, and is attached to transcript as part of Exhibit 59 with Burdette letter, and is as follows:

DEPARTMENT OF INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., Feb. 4, 1876.

Hon. ADDISON OLIVER,
House of Representatives:

SIR: I am in receipt of your letter of the 27th ultimo, making further inquiries relative to the grant for the C. R. & M. R. R. R., under act of June 2, 1864. In compliance with your request I return the map transmitted by you, with the date of filing the original, and the indorsements and certificates on said original map indorsed thereon. The original map, from which the copy furnished you is made, is the only one of the modified line on file in this office. It does not indicate the length of the line, and there is no evidence on file showing the length of the modified line. The map furnished you on the 19th ult. was made from the map of the modified line filed July 11, 1865, and the map of the western terminus of the road filed December 19, 1867.

It appears that the road from Missouri Valley to the river is con-
124 structed on the line of the so-called Onawa Branch, and not on the line indicated D. H., as laid down on the map filed July 11, 1865. I enclose copy of letter of Wm. Steiger, transmitting a map of the general route to the Secretary of the Interior, dated July 5, 1865, and a copy of the letter of the Secretary of the Interior transmitting the map to this office, dated July 10, 1865, copies marked "A," "B." Enclosed please find a copy of the certificate of Gov. Stone, dated July 2, 1867, for 271.6 miles of road, copy marked "C."

From the information in possession of this office it is impossible to state whether the certificate covers all the road constructed by the company or not, or to state the termini of the road constructed; neither can the date of construction be given.

There is a map filed in this office May 21, 1863, showing the first division of the C. R. & M. R. R. R., completed from Cedar Rapids to Marshall, 70 miles. Attached to this map is an affidavit of W. W. Walker, chief engineer, dated December 23, 1862, in which he states that prior to December 1, 1861, the company had completed and equipped two sections of 20 miles each of road west from a point on Cedar River, and that on the 20th day of December, 1862, the company had completed another section of 20 miles. This map was transmitted to the Secretary of the Interior by president of the company, with a letter dated February 20, 1863, copy enclosed marked "D." There is also on file certificates of Gov. Stone, of Iowa, dated October 31, 1864, stating the company had completed 60 miles of road, but date of completion is not given; copies of certificates enclosed "E" and "F." I also enclose letter from John I. Blair, January 20, 1865, marked "G." I would also state that from an estimate made by the draughtsman of this office the distance from Cedar Rapids to Council Bluffs on the line of general route as filed in this office approximates 270 miles. This calculation is not given, however, as the exact number of miles of road completed.

In addition to the map furnished you on the 19th ult. I transmit copy of the map of Onawa Branch and Council Bluffs Branch, filed December 19, 1867, with indorsements thereon, together with a copy of the letter of John I. Blair, president of the company, transmitting said map, December 19, 1867, marked "H."

These branches do not appear on the map of modified line filed
125 July 11, 1865. It is proper to state that the map in this office was made on a reduced scale by W. T. Steiger, agent of the company in this city, from the map furnished by Mr. Blair. The original map is in the possession of this office, however, but it was not officially filed.

The following statement will show when the lands were selected by the company and the number of acres selected:

July 28, 1865	4,395	acres.
August 15, 1866	139,565	"
October 22, 1866	191,438	"
August 29, 1867	41,999	"
March 31, 1872	2,258	"
July 26, 1872	1,206	"
November 16, 1874	859	"
December 12, 1874	3,274	"
December 21, 1874	4,707	"
October 15, 1875	406	"

The dates of approval were given in my letter of the 19th ult. in reply to your 4th question. It will be seen that a much larger quantity of land has been selected by the company than has been approved. On account of prior claims to the land many of the selections were rejected.

You ask me to "state whether there is any evidence on file in your office which shows where the modified line of said road begins or ends, or how long it is (and, if so, append same) or any evidence by which you can tell how much land the company became entitled to under the grant of June 2, 1864, or how much road it constructed under said grant of June 2, 1864, or which would enable the Secretary of the Interior to reserve any particular lands or amount of lands as inuring to said company under grant of 1864; and, if so, append the same."

There is no evidence showing where the modified line begins or ends other than the map filed July 11, 1865, showing the termini to be Cedar Rapids and the Missouri River, together with the map of the western terminus of the road and the Onawa and Council Bluffs branches, filed December 19, 1867, which indicates that the western terminus of the line proper is Missouri Valley, from which point the two branches radiate. The grant in place was not enlarged by the act of June 2, 1864. The limits from which indemnity could be selected were enlarged, and,
126 as stated in my letter of the 19th ult., it was estimated that there were 356,988 acres of vacant land from which indemnity could be selected under act of June 2, 1864.

As before stated, the certificate of Gov. Stone, certifying to the construction of 271.6 miles, is the only evidence in this office showing the number of miles of road constructed by the company.

The company still claim the right to make selections, and this right is recognized by this office. Under date of November 9, 1875, the company selected 800 acres, which have not been certified on account of your request that such action be suspended.

In my letter of the 19th ult., in reply to your 4th question, I stated that there had been certified to the company, under act of 1856 782,250 acres, and 349,683 acres under the act of 1864, making in all 1,131,933 acres. From this amount should be deducted 109,756 acres, the amount which, though certified for the company, was, by the decision of the United States Supreme Court, declared to inure to the prior grant for the improvement of the Des Moines River, together with 800 acres erroneously certified, as stated in my former letter, making an aggregate of 110,556 acres.

Enclosed I transmit copy of your argument in the case of J. L. De Puy, H. W. Needles, et al., as previously requested by you.

L. K. LIPPENCOTT,
(Tr., p. 771–'4.) *Acting Commissioner.*

Exhibit A, attached to foregoing letter (tr., pp. 775–'7) is as follows:

WASHINGTON, *July* 5, 1865.

Hon. JAMES HARLAN, *Secretary of Interior:*

SIR: I have the honor to transmit herewith the letter of W. W. Walker, esq., vice-president C. R. & M. R. R. R., addressed to you on the 19th, together with the accompanying map, duly authenticated, of the amended route of said road from Cedar Rapids to the Missouri River, which I beg to leave to place on file as the basis of the adjustment of the additional grant of 2d of June, 1864.

The corporate seal of the company appears to have been inadvert-

ently omitted on the certificate. I have this day written for a seal with authority to attach it, so as to obviate the necessity of returning the map for that purpose.

WM. T. STEIGER, *Agent, &c.*

(Tr., pp. 775–'7.)

127 Exhibit B, attached to Lippencott letter (tr., pp. 779–'81), is as follows: .

DEPARTMENT OF INTERIOR,
Washington, D. C., July 10, 1865.

SIR: I enclose herewith, for your information and appropriate action in relation thereto, a map, filed in this Department by Wm. T. Steiger, for W. W. Walker vice-president, showing the general route of the Cedar Rapids and Missouri River Railroad.

You will please return the map to this Department for filing.

JAMES HARLAN, *Secretary.*

The COMMISSIONER OF GENERAL LAND OFFICE.

(Tr., pp. 779–81.)

Exhibit C, attached to Lippencott letter, being certificate of Gov. Stone, July 2, 1867, was herein before set out in plaintiff's testimony, as Exhibit 24 (found in the abstract herein before set out p. 47).

Exhibits D, E, F, and G, referred to in Lippencott letter, are not in the transcript, and were not introduced in evidence.

Exhibit H, referred to in Lippencott letter, attached to transcript (p. 783–'5) is as follows:

WASHINGTON, *December* 19, 1867.

Hon. JOSEPH WILSON,
Commissioner General Land Office:

SIR: I have the honor to enclose a map showing the western terminus of the C. R. & M. R. R. R. in Iowa, which I respectfully request may be attached to the map of definite location heretofore filed.

J. I. BLAIR,
Pres't C. R. & M. R. R. R.

Please acknowledge, directed to me, Blairstown, N. J."
(Tr., 783–'5.)

Defendant offers in evidence report of register State land office for year 1871, which is attached to second deposition of J. Van Deventer in this case, and marked as there stated. (See p. of tr. 463, objected to by plaintiff as incompetent, and immaterial, and irrelevant.) (See ab., pp. 81–82.)

WM. T. BOYD, witness for defendant, testified in deposition:

Reside in Monona County, Iowa; 42 years of age; farmer and rancher; am defendant in this action; am in possession of N. ½ NW. ¼, 28, 84, 46; have been in possession 10 years; entered land at United States
128 land office, Council Bluffs, in December, 1867; went into possession under this entry in March, 1868, and since then have contin-

uously occupied said premises; was a house on it when I took it. I lived in the house; put in 20 acres of breaking; fenced 60 acres; put in crop; dug a well; built a stable; put out fruit trees worth $50; all in the summer of 1868; since then I have built a house, dug three wells, built stable, 100 feet of sheds, broke and fenced all the place, built a granary, etc. Improvements worth $2,000. I have a patent for said land, and here produce it, dated January 15, 1873, marked "Exhibit A." From March, 1868, to the date of said patent, my occupancy and possession of said premises were under my claim of entry, and have so been since the receipt of said patent. I have claimed the right of possession and title to said land under such entry and patent during all of said occupancy. I first heard of the claim made by plaintiff to said land in January, 1877.

Question. State whether at the time of your entry and at the time you made your improvements you believed said lands were at the time of such entry Government lands and subject to entry.

(Objected to as immaterial, and the remainder of the witness' testimony in chief, objected to by the plaintiff as immaterial at the time of taking the same.)

Ans. I did.

At the time of making said improvements, and prior to my entry, I knew nothing about a grant to plaintiff of any lands out of even-numbered sections, nor as to said grant having been adjusted.

I served as a soldier during the rebellion, four years and eight months.

Cross-examination:

The first improvements I made upon this land was 20 acres of breaking in the summer of 1868. I hauled the rails and lumber for the improvements in the winter and spring of 1868. I had heard at the time that there were railroad lands in this county. I had an agent to make my entry at the land office. (Tr., pp. 787–91.)

Exhibit A, attached to this deposition, is a patent from the Government to Wm. T. Boyd for N. ½ of NW. ¼, 28, 84, 46, dated January 15, 1873. (Tr., p. 792.)

BENJAMIN HERRING, a witness for defendant, testified in deposition as follows:

129 Age, 52; residence, Monona County, Iowa; am defendant in this case. I am in possession of E. ½ NE. ¼, 20, 84, 46; have been since June, 1865; entered the same as a homestead; made my application here before B. D. Hollbrook, May 28, 1865, and the receipt from the land office in June, 1865; I have occupied and lived upon it all the time as a farmer; built me a house in the summer of 1865; broke about five acres; next year I fenced 60 acres; broke 30 more acres; balance was broke within the next three or four years; made my stables and sheds in 1870; have material on hand for a barn; have three or four acres of groves, some of it 10 and some 6 years old; have an orchard of 60 or 70 apple trees, part of it 8 years old and balance set out since then; and have considerable small fruit. The land with improvements is worth $30 per acre. The land with the improvements is worth $21 per acre more than it would be without them. I have my patent for this land, and have produced it as Exhibit A to this deposition. From June, 1865, to the date of this patent my occupancy and possession of said premises has been

under my claim of homestead entry, and since the receipt of patent, under the patent.

(The balance of the testimony of this witness in chief was objected to at the time of taking the same as immaterial.)

It was about a year ago when I first heard of the claim of plaintiff to said premises. Never heard of any claim made by plaintiff to said land prior to 1875; at the time of my entry and the time I made my improvements I believe said lands were subject to entry, and been informed that they were Government lands. I was a soldier in the United States Army during the rebellion from August 12, 1862, to March 24, 1865. (Tr., pp. 793–'7.)

Exhibit A, attached to this deposition, is a patent from the Government to Benjamin Herring for E. ½ of NE. ¼ 20, 84, 46, dated April 1, 1872. (Tr., p. 798.)

DAVID GREENSTREET, witness for defendant, testified in deposition as follows:

Age 44; reside in Monona County, Iowa; am a farmer; am defendant in this action; am in possession of SE. ¼ of NW. ¼ of SW. ¼ of NE. ¼, 24, 85, 44; I entered the land as a homestead at Council Bluffs land office March 20, 1865; was in the army when I took the homestead; discharged November 1, 1865; went on homestead March, 1866;
130 been on it ever since; put up a house and broke 6 acres that season; fenced 20 acres; built stable and sheds, and afterwards built a new fence; set out about 40 apple trees, and small fruit; have one acre grove; 40 acres broken under good fence. Improvements worth $1,000 I have a patent for said land, dated January 15, 1873, and here produce it marked "Exhibit A." My occupancy and possession of said land up to the receipt of said patent was under my claim of homestead entry, and since the receipt of the patent under said patent; during all of my occupancy I claimed the right of possession and title under said homestead and patent.

(The balance of the testimony of this witness on the direct was objected to at the time of taking the same as immaterial.)

I did not hear of anyone having any claim on this land but myself till plaintiff served notice on me January, 1877. I heard of no claim being made by plaintiff to my land prior to 1875. I believe the said land was Government land at the time of said entry, and at the time of making my improvements, and had heard that every even section was Government land. I was a soldier in the United States Army during the rebellion and served three years. I understood at or before the time of making my entry that the railroad company owned every odd alternate section.

(Tr., pp. 799–803.)

Exhibit A, attached to this witness's deposition, is a patent from the Government to David Greenstreet for the SE. ¼ of NW. ¼ and SW. ¼ of NE. ¼, 24, 85, 44, dated January 15, 1873.

(Tr., p. 804.)

ELIJAH W. BROOKS:

Age, 58 years; reside in Monona County, Iowa; occupation, farmer.

Am defendant in this case; suppose I am in possession of W. ½ of NE. ¼ Sec. 20, Tp. 84, R. 46; entered it in May 28, 1865. Holbrook done the business for me. Got certificate in June from Council Bluffs; presume I have been in possession of the land since May 28, 1865; have occupied the premises, or caused them to be occupied, since June, 1865, as a farmer; built a house, small barn, and sheds; fenced into small lots; set out grove. These improvements were made from time to time. Set out 155 fruit trees last year. The land is worth $21 or $22 per acre over wild lands; fenced 60 acres. All my breaking was done within five years after I took it. I have a patent for my land, and here produce it, marked "A," and dated July 7, 1871. From May, 1865, up to receiving patent my occupancy and possession of said land was under my claim of homestead entry,
131 and since then under patent. During all my occupancy I claimed right of possession and title under entry and patent.

(The balance of the testimony of this witness on direct was objected to as immaterial.)

About a year ago I first heard of plaintiff claiming the land. I think I did not hear of any claim made to it by plaintiff prior to 1875.

At the time I made entry and improvements I believed the lands at time of entry were subject to entry, and had been so informed before making the entry.

I was a soldier in the United States Army during the rebellion; discharged June 1, 1864.

Cross-examination:

I think I heard there were railroad lands in the county before I made my entry, and that they were on odd sections; heard it talked of in that way. (Tr., pp. 805–'10.)

Exhibit A, attached to the deposition, is a patent from Government to Elijah W. Brooks, dated July 7, 1871, for W. ½ NE. ¼, Sec. 20, 84, 46. (Tr., p. 813.)

JOHN T. LAKE, a witness for defendant, testified in deposition as follows:

Age, 56; reside in Monona County, Iowa; am a farmer; am defendant in this action; am in possession of N. ½ of SE. ¼, Sec. 4, Tp. 85, R. 42; have been in possession since August, 1866; entered said lands at Council Bluffs August 17, 1866; went into possession of said land under homestead in fall of 1866; have occupied it continuously ever since, except in winter of 1866 and 1867; dug a cellar in fall of 1866; put up a shanty that fall and framed timbers for a house. In spring of 1867 put up my house and had 14 acres broke in July, 1867, and lived in my house from May, 1867; had first crop in 1868; planted one-half an acre of cottonwood in 1868; in 1868 put out grape vines and currants, one-half acre of box-elder planted, $25 worth of apple trees and 60 fruit trees out; 32 acres broke on the place; the last was done 6 years ago; 40 acres fenced on two sides; have had crops on place as much as I was able since 1867 every year; my improvements are worth $500; I have a patent for my land, and here produce it, dated April 10, 1874, and mark it "A."
132 My possession and occupancy of the land up to receipt of patent was under my homestead and since then under my patent. I heard

no claim by plaintiff or any one to the land prior to December last; heard no such claim prior to 1875, at time of my entry and making improvements; I believed the lands were Government lands at the time of my entry.

(Tr., pp. 812–'15.)

Exhibit A, attached to this deposition, is a patent from the Government to John T. Lake, dated April 10, 1874, for N. ½ SE. ¼, Sec. 4, 85, 42.

(Tr., 816.)

DANIEL T. CUTLER, witness for defendant, testified in deposition as follows:

Age, 36; residence, Monona County, Iowa; am a farmer; am defendant in this case am in possession of S. ½ NW. ¼, 10, 84, 46; have been for 11 years; entered them as a homestead August 12, 1866; made my application through Holbrook Bros., of Onawa.

Holbrook Bros. were offering railroad lands for sale, and it was my understanding they were plaintiff's authorized agents; went into possession of said land under homestead entry, and commenced breaking August 12, 1866; have occupied said premises continuously since August, 1866; the first year broke 5 acres; built house and stable; set out one acre of timber; put grove out the next spring; fenced 25 acres; second year broke 25 acres; have now 65 acres broke and 80 acres fenced; have carried on farming ever since I went into possession; the improvements put on the place are worth $1,000, and the place will sell for that much more than it would without them; I have a patent for the land; here produce it, dated January 15, 1873, marked "A." From time of entry up to receipt of patent my occupancy of said land was under my claim of homestead entry, and since then it has been under patent; during all of my occupancy I have claimed right of possession and title to said premises under said entry and patent.

(The remaining part of this witnesse's testimony was objected to at the time as immaterial.)

I never heard of any claim by plaintiff or any one but myself to this land till last year; never heard of any such claim prior to 1875, at the time of my entry and making improvements; I believed said lands were at time of entry, Government lands and subject to entry; had been
133 informed that they were Government lands; one of the Holbrooks told me I could take a homestead there, and I selected one and received my receipts.

I was a soldier in United States Army during the rebellion; served three years.

Cross-examination:

Holbrooks offered to sell me railroad lands; I broke 5 acres of land in 1866.

(Tr., pp. 817–822.)

Exhibit A, attached to this deposition, is a patent from Government to Daniel T. Cutler, dated January 15, 1873, for S. ½ of NW. ¼, 10, 84, 46. (Tr., p. 811.)

CATHERINE F. WOOSTER, witness for defendant, testified by deposition as follows:

Age 38; reside in Monona County, Iowa; wife of Q. A. Wooster; am defendant in this suit; myself and husband are in possession of the land involved in the suit of R. R. Co. vs. Catherine M. Wooster; have been in possession thereof since 1867; I have a patent for said land, and here produce it as Exhibit A; my husband entered the premises for me in my name in September or October, 1869; no knowledge of any other claim to the land at the time I entered the land; had no knowledge or notice of any other claim to this land until served with notice to defend in this suit.

Cross-examination:

The land was entered by private entry; I have no means of knowledge as to the date, except by general recollection; my entry was made, I was informed, at Council Bluffs, by my husband; I made no examinations myself of the records to ascertain about any adverse claim; do not know whether there was a map or plat in local land office showing the line of plaintiff's road and limits of land grant; did not examine any map or plat. (Tr., pp. 840–'42.)

Exhibit A, attached to this deposition, is a patent from the Government to Catherine M. Wooster, dated May 16, 1870, for E. ½ of SW. ¼, 12, 85, 43. (Tr., pp. 843.)

LEWIS IDDINGS, a witness for defendant, testified in deposition as follows:

Age 36; reside in Monona County; farmer; am defendant in this action; am in possession of the land in the suit brought against me; went into possession in October, 1865, and have occupied them continuously ever since; entered them as a homestead about June 14, 1865; took possession by virtue of such entry; obtained patent for said land, and it is attached to the deposition as Exhibit A; prior to obtaining patent my possession was by virtue of homestead entry, and since then by virtue of patent; took said premises to make a home for myself and family; the land is all enclosed, except 3 or 4 acres; in fall '65 built a log stable; dug a well and bricked the same; made cattle-yards and sheds. In 1866 broke 30 acres and built a frame house. In 1867 fenced the broken lands and put in crops, and broke 15 acres more and planted cottonwood trees for a wind-break. In 1868 broke 25 acres more and put in a crop. In 1869 enclosed all the lands now enclosed and put in crop; put out forest trees and planted fruit trees. Since 1869 have put in crops and made other improvements. The land without the improvements would be worth $8 per acre, and with them $20 per acre. I had no knowledge at any time since taking possession of said premises that plaintiff, any corporation, or person, had any claim to said premises until I was served with notice in this case; had no knowledge of any claim to the land other than my own prior to 1874. It was currently reported that the land was subject to homestead entry at the time I made my entry, and I was so informed, and I aimed to have the plat from land office showing lands subject to entry. I employed F. A. Day to forward my homestead application to land office at Council Bluffs.

134

Cross-examination:

The land was entered as a homestead. My means of knowledge as to dates is my general recollection of dates.

The entry was made at Council Bluffs through my agent. I made no examination of the records; don't know whether there was a map or plat at local land office showing plaintiff's line of road and the limits of land grant. Did not examine said map or plat whether the land I entered fell within the limits of said land grant.

(Tr., pp. 845–'50.)

Exhibit A, attached to this deposition, is a patent from the Government to Lewis Iddings, dated January 15, 1873, for N. ½ of NE., 6, 85, 42. (Tr., p. 851.)

QUINCY A. WOOSTER, witness for defendant, testified as follows:

Age, 38; reside in Monona County; am a farmer; am husband of defendant in suit of Railroad Company vs. Catherine M. Wooster, my wife.

Myself and family are in possession of the land involved in said
135 suit; have been in possession since about July 1, 1867; first went into possession under homestead entry, and held possession under homestead entry until about October, 1869; since then under private entry of my wife; homestead entry was made about 2d July, 1877, in person at local land office at Council Bluffs; I made private entry for and in name of my wife in October, 1869; paid to receiver $200 therefor; took possession of this land about July 5, 1867; done some breaking; commenced a cellar and house; completed house October, 1867, and then moved in, and have occupied it continuously ever since, and cultivated the land ever since. In 1868 or '69 I broke 25 or 30 acres, fenced it, and have from year to year broke additional parts of the land, and now there are 65 acres under cultivation; have built granary, stables, sheds, etc.; have planted 8 acres of premises to forest trees, fruit trees, and shrubbery; said premises are now all under fence; I believe the improvements are worth $1,600; had no knowledge or notice of any adverse claim to this land at the time either entries were made or while improvements were being made until about commencement of this action; at time of making first entry I was informed by Frank Street, register of land office at Council Bluffs, that said lands were subject to entry; shortly before making second entry I was informed by register and receiver at said land office that said land was subject to entry; I have two maps purporting to have been sent out by plaintiff or Iowa Railroad Land Company, and purporting to show the lands claimed by them, and attached them to my deposition as Exhibits B and C; to the best of my knowledge Exhibit B come direct from company's office from Cedar Rapids in 1871 and '72, and Exhibit C was either sent by mail from Cedar Rapids or left by railroad men in 1873 or '74. In May or June, 1865, I was at Council Bluffs land office, and was shown by register at that time what purported to be official plats of land, and, according to my recollection of said plats, the land in controversy was at that time Government land; when at land office in 1867 I again, to a certain extent, examined said plats and records, and found nothing to lead me to suppose that there was adverse claim to said land, and I was assured by the officers that I had a right to enter the same, and both entries were made in good faith.

Cross-examination:

The land was entered at Council Bluffs in 1867; for my wife
136 in 1869; can't say that I made any more particular examination than to inspect tract-book or plat-book, by which I found said land to be vacant.

I have examined maps purporting to show location of railroad and the lands belonging to railroad company, but have never seen anything on said maps leading me to suppose that the land in controversy belonged to railroad company; can't now recall any particular time at which I made examination of any map or plat purporting to show the line of Air Line Railroad and the limits of land grant; I don't know, of my own knowledge, by whom the maps I have testified about were prepared; there is no doubt in my mind but that I received one or both said maps by mail, at my request, from railroad land department at Cedar Rapids. I am positive that a number of maps similar to the one marked "C" came into my possession during 1871, '2, and '73; would not say positively that these identical maps were sent me by mail, but feel positive that during said years I received these or similar maps from W. W. Walker or C. H. Clark, or both of them.

(Tr., pp. 852–'9.)

Exhibit B and C, attached to this deposition, are maps which it is impracticable and impossible to set out in abstract, and are attached to transcript, pp. 860–'1, and are hereby referred to.

G. H. BRYANT, witness for defendant, testified in deposition as follows:

Age, 37; reside at Onawa, Monona County, Iowa; occupation now, treasurer of said county, and have been since January 3, 1876; I know from the records and from some of the payments having been paid to me who has paid the taxes on lands in controversy.

The taxes on S. ½ NW., 10, 84, 46, for 1873, 1874, '5, '6, were paid by D. T. Cutler, amounting in the aggregate to $58.51.

The E. ½ of NE. ¼, 20, 84, 46, was sold for tax 1875, November 6, 1876, and redeemed by B. Herring April 20, 1877, by payment of $49.69, of which amount $16.52 was tax of 1875; $18.90 was tax of '76, and $14.27 was penalty, costs, etc.

B. Herring paid the taxes of 1872, '73, and '74, amounting to $41.13.

The taxes on W. ½ of NE. ¼, 20, 84, 46, have been paid by E. W. Brooks for 1871, '73, '74, and '75, etc., amounting in all to $70.65

137 The taxes on N. ½ of NW. ¼, 28, 84, 46, have been paid by W. T. Boyd for 1873–'4–'5 and 1876, amounting in all to $50.36.

The taxes on N. ½ SE. ¼, 4, 85, 42, have been paid by John T. Lake for 1874 and 1875, amounting in all to $14.47.

The taxes on SE. ½ of NW. ¼ and SW. ¼ of NE. ¼, 24, 85, 44, have been paid by David Greenstreet for 1874–'5 and '76, amounting in the aggregate to $26.50.

The taxes on E. ½ SW. ¼, 12, 85, 43, have been paid by Q. A. Wooster for 1871–'2–'3–'4–'5 and '76, amounting in all to $68.29.

The taxes on N. ½ of NE. ¼, 6, 85, 42, have been paid by Lewis Iddings for 1873–'4–'5 and 76, amounting in all to $35.63.

The taxes on SW. of SW., 6, 84, 45, have been paid by P. G. Dundon for 1873–'4 and '75, amounting in all to $14.53.

No one, excepting as above specified, has paid taxes on these lands, and the above statement does not include road taxes paid in the township.

(Tr., pp. 873–885.)

CHAS. H. HOLBROOK, a witness for defendant, testified in deposition as follows:

Age, 47; reside in Omawa, Monona County, Iowa; occupation, surveyor; have resided here 20 years.

Don't know how far it is from Cedar Rapids to Missouri Valley on line of C. R. & M. R. R. R. I know mile-post 330 is 2,442 feet west of Missouri Valley station.

I think there are two roads—the Sioux City and Pacific and Cedar Rapids and Missouri River Railroads—that connects Missouri Valley with Council Bluffs; can't tell whether they, or either of them, extends to the bank of Missouri River, opposite Omaha. From Missouri Valley to bank of Missouri River, opposite Omaha, is about 24 miles; from Missouri Valley to Council Bluffs is about 21 miles; my means of knowledge is distances marked on conductor's card, who had charge of train on said road.

The nearest mile-post west of Missouri Valley on line C. R. & M. R. R. R. is 330, and is 2,442 feet from the station; my means of knowledge is by measurement made by myself and assistant, with surveyor's chain.

(Tr., pp. 894–'6.)

PATRICK DUNDON, witness for defendant, testified in deposition as follows:

Age, 45; reside in Monona County, Iowa; am a farmer; am defendant in this case; I am in possession of the land involved in the
138 suit brought by Railroad Company vs. Patrick Dundon; I entered the land as a homestead; did not personally enter it at land office, but employed Holbrook to do the business. It was about August 14, 1866; I went into possession under my entry; commenced work on the land within 6 months after I made entry; have lived on the place all the time since the first year; I broke 15 acres and put up a house, sunk a well, and fenced 20 acres; the third year I broke balance of the land and fenced it all in; I planted out about 6,000 trees and $15 worth of fruit trees. In fourth year I sunk a pond 10 feet deep, 20 feet wide, and 80 feet long, to drain my land, and put up cattle sheds, hay house, corn house, granary, wagon house, etc. I have patent for the land, and here produce it, marked "A;" before I received patent my occupancy was under homestead entry; the land without the improvements would be worth $2 per acre cash, and with them $15 per acre. I was informed before I made entry that this was Government land; never heard any claim to the contrary till this suit was commenced.

Cross-examination:

Mr. C. H. Holbrook was the agent through whom I entered this land; I made no examination or inquiry at local land office at Council Bluffs to

see whether this land fell within limit of land grant of Air Line Railroad or the modified line, except through C. H. Holbrook.

I knew nothing about the grant at the time I made my settlement; when I first came into the county I heard of the railroad coming to Council Bluffs; may have heard where line was located, but did not know anything about it; am acquainted with value of improved and unimproved land.

(Tr., pp. 909–'16.)

Exhibit A, attached to the deposition, is a patent from Government to Patrick Dundon, dated April 10, 1874, for S. ½ of SW., 6, 84, 45.

(Tr., p. 919.)

Defendant offered in evidence certified copy of selection made by Bernhardt Henn, agent, under act of Congress May 18, 1856, dated September 4, 1856, attached to transcript by defendant as Exhibit 60, and herein before set out by plaintiff, (in transcript, pp. 920–'6) as Exhibit 2, and found in this abstract as Exhibits 2, p. 34.

Defendant offers in evidence letter from Commissioner of Gen-
139 eral Land Office, dated October 25, 1877, attached to transcript as Exhibit 61, pp. 927–'30 (objected to by plaintiff as incompetent, immaterial, and irrelevent), and is as follows:

DEPARTMENT OF INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., Oct. 25, 1877.

Hon. ADDISON OLIVER,
House of Representatives:

SIR: I have the honor to transmit herewith certified copy of the letter from Bernhardt Henn, esq., agent of the State of Iowa, dated Chicago, Ill., Sept. 4, 1856, as per request of Messrs. Monk & Selleck, dated Onawa, Iowa, 17th instant. That letter was an election by Mr. Henn, on behalf of the State, to take the odd sections in the 15-mile limits of the grant to said State for railroads in lieu of the odd sections disposed of within the granted limits, and is the only election of that character ever made by an agent of said State for the purposes named that can be found after diligent search of the records and files of this office.

J. A. WILLIAMSON,
Commissioner.

(Tr., pp. 927–'30.)

Defendant also offered in evidence statement of case and opinion in case of Williams vs. Baker, found on page 144 in 17 Wallace, United States Supreme Court, heretofore introduced by plaintiff under the stipulation (and found in this abstract, p. 104; Tr., pp. 566–'83).

Defendant offered in evidence an abstract of declaratory statements (attached to transcript as Exhibit 62), filed in Council Bluffs land office, as follows:

140]

No. of settlement.	Date of settlement.	Date when filed.	Name.	Description.	Section.	Township.	Range.
546.....	June 14, 1865	June 16, 1865	Q. A. Wooster ...	W. ½ NE.....	6	85	42
544.....	Jan. 28, '63	Feb. 6, '63	Benj. Taylor.....	SW. SE.....	24	85	43
544.....	April 20, '63	May 1, '63	C. R. Searl.....	N. ½ NW	4	84	44
5450.....	May 18, '63	May 21, '63	H. Churchill	W. ½ NW	14	85	44
6466.....	March 7, '67	March 21, '67	N. Linkswiler	NE. NW.....	6	85	47
5467.....	August 2, '67	October 9, '67	Q. A. Wooster	SW. SE	6	85	42
5468.....	August 1, '67	October 9, '67	T. B. Harris.....	SW. NE. & SE. NW.	6	85	42

(Tr., 931.)

141 ALBERT J. HATHWAY, witness for defendant, testified in deposition as follows:

Age, 21 years; reside in Monona County, Iowa; I have in my possession a map or plat showing the land claimed by I. R. R. L. Co. in this county; got it, I think, at Cedar Rapids in 1870 or '72; think I got it from an agent there at the office of the I. R. R. L. Co.; his name was Clark, I think; think he is secretary of the company. I wanted to purchase a piece of land, and expected to get him some purchasers probably; I wanted a list of their lands for sale; he gave me a circular and price on some of the pieces. I made a purchase at the time; both Clark and Walker were in the office. I done the business mostly with Clark.

Cross-examination:

I purchased 40 acres at that time; I can't tell exactly what 40 it was; the clerk, I think, put down the different prices on the map; I said at the time that I might want to sell more; I might have a chance to sell more; I think Clark was Secretary of the Iowa Railroad Land Company; he was some officer; he issued the deed to me; think his name was on the deed.

I don't remember that Walker was having anything to do with this business.

(Tr., pp. 973–977.)

THOMAS HURST, witness for defendant.

Reside in Monona County, Iowa; resided there 10 to 12 years.

I have a circular of the Iowa Railroad Land Company, and their plat of lands; got it from Cedar Rapids; wrote for it three years ago; I bought some of the land after I got this. I produce the plat and mark it "Exhibit C."

(Exhibit C will be found attached to transcript, pp. 986–987.)

D. B. HOLBROOK, witness for defendant.

Age, 43; reside in Monona County. I have lived there about 20 years; acted several years ago as agent for parties in forwarding their applications to the land office to enter homesteads; it was in 1864, perhaps, and continued in 1865–'6 and '67. We received lists from time to time from the register and receiver at Council Bluffs of lands open to pre-emption and homestead entry; this information was conveyed to parties from time to time who applied to enter homestead and pre-emptions; applications were made out in our office and forwarded to register's office.

142 We received the certificates therefor from register and delivered them to the parties; parties seeking information as to lands open to homestead entry came to us, and we gave them such information as we received from the land officers; for that information we depended upon the list and letters that we got from the land office; could not tell, but think I forwarded no applications for lands where the lists did not show they were subject to homestead entry; I have represented the I. R. R. L. Co. and the C. R. & M. R. R. R. in the sale of their lands in this county; could not tell when I began; it was 6 or 7 years ago; don't know whether we sold any land prior to 1870 or not. We had prior to that time been receiving pre-emption applications for the land in behalf of railroad company; I never heard of any claim made by the company to the land in suits prior to 1874; have seen map sent to us by the I. R. R. L. Co.; I never saw on any of those maps any lands in controversy as belonging to the company. I received the maps from the railroad company for distribution.

Cross-examination:

These maps represented the lands that were for sale; I knew nothing about the certifications. There were changes made to the maps from time to time, and additions. I don't know, as a matter of fact, that the lands are not put into market and sold until after they were certified under act of 1864; first offered the lands of railroad company for sale in 1870 in this county, perhaps in 1869.

These pre-emption filings were simply a statement that the holders would be entitled to purchase the land described at its appraised value when the land was put in market; for a certain length of time he would have a prior right to buy the lands when they were put in market.

(Tr., pp. 1008–'15.)

JOHN K. MCCASKEY.

Reside in Monona County; am county auditor; lived here 11 years. The Sioux City and Pacific Railroad runs into and through Onawa, Monona County; there is no other railroad; there is no road from at or near a point near Denison, running through Onawa; Sioux City and Missouri Valley are the termini of the Sioux City and Pacific Railroad; Denison is about 50 miles west of Missouri Valley.

Cross-examination:

My means of knowledge as to the termini of the S. C. & P. R. R.
143 is that I was here when it was built; that was my understanding; I have no official knowledge; I know they run from Sioux City to Missouri Valley; there is no other part of that road called by that name, except this one running from Sioux City to Missouri Valley; don't know who constructed the road from Denison west; I believe Blair was the principal man in constructing the S. C. & P. R. R.; he was also interested in the construction of the road from Denison west; he was largely interested in the construction of both roads; the Sioux City Railroad was constructed after the other, the next year after the railroad was constructed from Denison west; I don't know that I ever heard the Sioux City and Pacific called the Onawa Branch; the trains on the Sioux City and Pacific connect with the trains running from Dennison; the travel

going east from this section goes over the Sioux City and Pacific Railroad from Onawa to Missouri Valley, and thence by the way of Denison, and the freight cars of the Northwestern are frequently run over the line; such cars frequently loaded from this place. The Northwestern Railroad passes through Denison; this Northwestern Railroad is a division of the road from Cedar Rapids through to the Missouri River.

Redirect:

Know trains are loaded here for the Union Pacific Railroad; never heard of the Onawa Branch being built; heard that the Onawa Branch was expected to be built from Denison; I have frequently traveled over the Sioux City and Pacific Railroad; have bought tickets from here to Sioux City, from here to Missouri Valley, and from Missouri Valley here; my knowledge of the termini of the road is from traveling over the road.

Cross-examination:

Have bought through tickets from here to Council Bluffs; they are sold I presume from here to points east.

(Tr., pp. 1016–'23.

Exhibits A, B, and C, referred to and attached to the foregoing depositions, are the maps testified to as having been sent out by the plaintiff with their list of lands marked thereon, and are attached to transcript and found on page 1024.

And the foregoing was all the testimony introduced in said causes, and is herein before fully set out, except that the maps introduced by the respective parties it was impracticable to set out in abstract, but they are referred to in the abstract and attached to transcript.

144 And on the 13th day of June, 1878, there was rendered in each of said nine causes a judgment, as follows:

"Now, on this 13th day of June, 1878, this cause having been by me fully considered, after hearing the proofs and allegations of the parties, and the arguments of counsel—plaintiffs appearing by Joy & Wright, J. F. Wilson, and I. N. Kidder, and the defendants by their attorneys, Platt Smith and Monk & Selleck—the court finds that the plaintiffs have failed to establish that the patent from the United States, mentioned in the pleadings, was issued to the defendant by reason of fraud or mistake, but that the same was duly and legally executed and delivered to the defendant, and that the same is valid and effectual in law and equity, and that the plaintiffs have no right, title, or interest in the lands conveyed thereby.

"It is therefore considered, adjudged, and decreed by the court that the plaintiffs' bill, after full hearing upon the merits of the same, be dismissed, and that the defendant have and receive of the plaintiff his costs herein expended, and that execution issue therefor."

(To all of which ruling and order the plaintiff excepts.)

"This ruling is had and decree rendered and pronounced, and entry thereof to be made by the clerk of the district court of Monona County as of the January, 1878, term of said court, in pursuance of an agreement of the parties heretofore made in open court.

(Signed) "C. H. LEWIS,
"*Judge, &c.*"

(Tr., pp. 1024–1040.)

And on the 21st day of September, 1878, plaintiff duly served on the defendants in each of said causes, and the clerk of said court, notice of appeal, and filed the same in said court.

(Tr., pp. 1042–1052.)

Assignment of error.

Appellant says there is manifest error on the face of the record in this: that the court erred in finding that the patents issued to the respective defendants were not issued by reason of fraud or mistake, but were legally issued.

The court erred in finding that plaintiffs have no title or interest in the lands in controversy.

The court erred in dismissing plaintiffs' bill in the said causes herein set out.

Addenda.

The transcript from which the foregoing abstract is made contains a certificate attached thereto by the district judge, who tried said causes, certifying that said transcript contains all the testimony, documentary evidence, and maps offered and introduced on the trial of said causes.

145 STATE OF IOWA,
Woodbury Co., ss:

We hereby accept full & legal service of the within abstract this 18th day of July, A. D. 1879.

JOY & WRIGHT,
Att'ys for App'lts.

In the supreme court of Iowa, September term, A. D. 1879.

THE CEDAR RAPIDS & MO. RIVER R. R. AND the Iowa Railroad Land Co, appellants,
vs.
BENJAMIN HERRING AND EIGHT (8) OTHER cases, each by the same plaintiffs, one against each of the following named defendants, Catharine M. Wooster, John T. Lake, Daniel T. Cutler, Patrick Dundon, Lewis Iddings, Elijah W. Brooks, William T. Boyd, and David Greenstreet, appellees. } In equity.

Appeal from Monona County district court.

James F. Wilson, I. N. Kidder, and Joy & Wright, attorneys for appellants; Platt Smith and Monk & Selleck, attorneys for appellees.

Appellees' additional abstract.

An additional abstract being necessary by reason of important
146 omissions in appellants' abstract, we also deem it essential to a cor-

rect understanding of the case to repeat facts in a chronological order which are to be found in appellants' abstract.

Reference will be made to transcript only where facts are stated not found in appellants' abstract.

All the letters in evidence bearing date subsequent to June 2, 1864, between the appellants, the Department at Washington, and the local land offices, are herein repeated in the order in which they were written, with the pages of appellants' abstract on which they are to be found.

The following letters were written and acts performed at the times specified:

[Page 39, abstract.]

GENERAL LAND OFFICE, *June* 16, 1864.

REGISTER AND RECEIVER,
Council Bluffs, Iowa:

GENTLEMEN: The Secretary of the Interior, at the request of the Iowa delegation in Congress, has directed that all the public lands in said State be withdrawn from entry and location by individuals, with a view to facilitate the adjustment of the several grants of lands recently made by Congress to the State of Iowa.

You are therefore hereby instructed to withdraw from sale, location, homestead entry, or pre-emption claim, all the public lands in your district, now subject to sale, from the date of the receipt of this letter, excepting that you will allow the completion of the selections by the State under the grant for agricultural colleges.

The receipt of this you will promptly acknowledge, stating the date at which it may reach you, thus interdicting thereafter the disposal of any tract with the exception mentioned.

Very respectfully,

J. M. EDMUNDS,
Commissioner.

[Page 40, abstract.]

DEPARTMENT OF INTERIOR,
GENERAL LAND OFFICE, *June* 25, 1864.

HON. J. P. USHER,
Secretary of Interior:

SIR: I have the honor to acknowledge the receipt of a letter
147 from Hon. J. W. Grimes and Hon. James Harlan, which was referred by you to this office the 23d inst. for report, and, in reply thereto, state that after a careful reading of the law referred to by those gentlemen, approved June 2, 1864, amendatory to the act entitled "An act making a grant of land to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," approved May 15, 1856, I am satisfied that it operates upon all public lands belonging to the United States at the date of said enactment, and lying within the prescribed limits of the several lines of road mentioned, saving rights of prior inception; consequently not only takes hold of the odd but the even numbered sections also.

J. M. EDMUNDS,
Commissioner.

[Page 58, abstract.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *Aug.* 22, 1864.

Hon. J. P. USHER,
Secretary of the Interior:

SIR: I have the honor to inclose to you a letter from Hon. Jno. A. Kasson, asking for a modification of the order heretofore made withdrawing public lands from sale in Iowa, so as to allow pre-emption claims and homestead entries in the Council Bluffs and Des Moines districts, and I respectfully recommend that his request be granted.

I am, very respectfully, your obedient servant,

JOS. S. WILSON,
Acting Commissioner.

[Page 58, abstract.]

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Aug. 24, 1864.

SIR: I have considered your request of the 22d inst., and the accompanying letter of Hon. Jno. A. Kasson, and cordially assent to the modification of the order withdrawing the public lands from sale, so that homestead and pre-emption claims shall not be inhibited thereby.

P. P. USHER, *Secretary.*

COMMISSIONER OF GENERAL LAND OFFICE.

148 [Page 59, abstract.]

GENERAL LAND OFFICE, *August* 25, 1864.

REGISTER and RECEIVER,
Des Moines, Iowa:

GENTLEMEN: In pursuance of instructions from the Hon. Secretary of the Interior, under date of the 24th inst., the order of the 16th of June last withdrawing from sale the public lands in Iowa is modified so that entries may be made under the homest'ad and pre-emption laws as before that order was issued, and you will allow such entries to be made accordingly.

JOS. S. WILSON,
Acting Commissioner.

A similar letter sent to Council Bluffs.

[Page 112, abstract.]

COUNCIL BLUFFS, *Aug.* 27, 1864.

[By telegraph from Washington, Aug. 25, '61.]

To REGISTER and RECEIVER,
Council Bluffs, Ia.:

The lands in your district are to be treated as open to homestead and pre-emption.

JOS. S. WILSON,
Acting Commissioner.

[Page 112, abstract.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *December* 8, 1864.

REGISTER LAND OFFICE,
Council Bluffs, Ia.:

SIR: In reply to your letter of the 23d ult., I have to state that selections of public lands by railroad companies under act June, 1864, of the even-numbered or indemnity sections within the limits of the several roads provided for in said act, will take effect from the time of filing such selections in the local land office. The odd-numbered sections in the limits of the several roads inure to the State or companies from date of survey in the field of the line of road.

JOS. S. WILSON,
Acting Commissioner.

[Pages 92 and 93, abstract.]

WASHINGTON CITY, *January* 20, 1865.

Hon. J. P. USHER,
Secretary of Interior:

149 SIR: I have the honor to enclose herewith two certificates of the governor of Iowa, one for 20 miles and the other for 40 miles, making in all sixty miles of completed railroad, in conformity to the laws of the State of Iowa and the laws of Congress, commencing at Cedar Rapids, Iowa, and running nearly due west following the 42' parallel of latitude, and for which we are entitled to receive certain lands of Congress. We would state that we have 120 miles of said road constructed, but we present certificates for only sixty miles at this time. The company desire to place these documents on file and have all things put in shape to enable it to receive and dispose of the lands due them for forty miles of said road at the earliest period. I enclose likewise the resolutions of the board of the Cedar Rapids and Missouri River Railroad Company appointing the Hon. Oakes Ames and myself their agents to procure the same.

I am, very respectfully, your obedient servant,

JOHN I. BLAIR,
For himself and Oakes Ames.

We desire Mr. Steiger, of Washington, to act as our agent, to assist, and request that he be recognized.

[Page 59, abstract.]

SIOUX CITY, IOWA, *May* 2, 1865.

Hon. JAS. HARLAN,
Secretary of the Interior, Washington, D. C.:

SIR: At the request of the Congressional delegation from this State, about one year ago, the public lands in this and the Fort Dodge land districts were withdrawn from the market, except for homestead, pre-emption, and swamp-land entries, &c. From my acquaintance with these districts and the circumstances by which they are now surrounded, I am

satisfied that the reason which induced the delegation to make the application at the time do not now exist.

At this time there seems to be no inducements nor disposition to settle lands for speculation, but there is a demand for actual settlements. This being the case, there is a general desire on the part of the people that the lands shall be opened for general entry, and I think that the interests of this part of the State require it to be done. I therefore request
150 that the lands heretofore withdrawn may be restored to market, except the odd sections embraced within the railroad grants.

A. W. HUBBARD.

[Pages 94 and 95, abstract.]

C. R. & M. R. R. R.,
OFFICE OF SECRETARY AND TREASURER,
Cedar Rapids, Iowa, May 8, 1865.

WM. T. STEIGER, Esq.,
Agent at Washington, D. C.:

DEAR SIR: I have learned that a large number of pre-emption claims are being made at the Fort Des Moines land office to lands included in the grant to this company, many of which claims are entirely invalid, as we can clearly show if we have a little time to furnish proof. I have incidentally heard of the following cases, and can give abundant proof of the facts. I will state each case:

Wm. Pitcher claims NW. ¼, Sec. 19, Tp. 84, R. 26; he has an improved farm adjoining this land, but has no improvements on this 40 acres and never had any.

Chas. Houton claims lot 8, Sec. 23, Tp. 84, R. 27; has not lived on the land but two years, and has made no improvements.

McMillen claims E. ½ NE., Sec. 7, Tp. 83, R. 26; has lived on the land but two years, and made no improvements.

Mrs. Milbourn claims SE. of SE., Sec. 11, Tp. 83, R. 27; deserted her claim and gone for one year or more.

Herbert Baltin, SW. of SW., Sec. 3, Tp. 84, R. 27; lives on adjoining land, but has no improvements on this and never had.

Jesse Hall—cannot now give description; facts same as in last above case.

Frank Robinson—cannot give description; bought 40 acres of the State of Iowa while the land was supposed to be Des Moines River grant, and made improvements; now files a claim for the same 40 acres and also the adjoining 120 acres. He has no improvements on the 120 and never had.

Allison—have not yet got description; has been on land less than two years.

I hear there are various other cases, which I have not yet the facts in regard to.

We would like to have you report to us all the applications
151 for pre-emptions which have been received by the Department at Washington and have not yet been acted upon, and also notify us of any others which may hereafter be presented, and also request the Commissioner to delay any decisions upon these cases until we can have a rea-

sonable time to furnish proof that such claims as I have named are invalid.

We understand that a person to make this claim valid must have gone onto the land prior to the date of the filing of the line of the road, must also have made improvements and resided on the land ever since, not having sold or transferred his claim. Is this correct?

Yours, truly,

W. W. WALKER,
Vice-President and Secretary.

J. I. Blair, for himself and Oakes Ames, agents, C. R. & M. R. R. R.
Approved.
Please refer this matter to the Land Commissioner at Washington.

[Page 40, abstract.]

WASHINGTON, *May* 12, 1865.

Hon. JOS. S. WILSON,
Acting Commissioner, General Land Office:

SIR: I have the honor to enclose herewith a joint communication, bearing date the 8th inst., just received from W. W. Walker, esq., vice-president, and Oakes Ames and John I. Blair, esq., agents of the Cedar Rapids and Missouri River Railroad Company, of Iowa, on the subject of alleged homestead and pre-emption settlements permitted on lands already vested by law in said road under the grants of Congress, as we hope to be able to show to the satisfaction of the Department.

In the mean time, to prevent much embarrassment, I respectfully request—

1. That instructions may be immediately given to the local land offices forbidding the allowance of homestead and pre-emption entries on the even-numbered sections within fifteen miles of the line of road as fixed and established under the act of May 15, 1856, or upon any of the sections (even or odd) within the additional five miles on each side thereof granted by act of the 2d of June, 1864; and,

152 2. That all homestead and pre-emption entries and locations of the above-mentioned lands settled on after 2d June, 1864 (the date of the new grant), may be suspended, with a view to their examination and cancellation. As the agent of the Burlington and Missouri River Railroad Company, I beg leave to prefer similar requests relative to such settlements and entries within the adjusted limits of their grants.

W. T. STEIGER, *Agent, &c.*

[Page 41, abstract.]

DEPARTMENT OF INTERIOR,
GENERAL LAND OFFICE, *May* 26, 1865.

Hon. JAMES HARLAN,
Secretary of Interior:

SIR: I have the honor to enclose herewith a letter from Wm. T. Steiger, agent, &c., accompanied by a letter from W. W. Walker to him on the subject of vacant lands within the 15 and 20 mile limits of cer-

tain railroad grants in Iowa, and respectfully request instructions as to the order Mr. Steiger requests this office to make in reference to said lands.

J. M. EDMUNDS,
Commissioner.

[Page 60, abstract.]

DEPARTMENT OF THE INTERIOR,
Washington, D. C., May 27, 1865.

SIR: I have received your communication of yesterday, with inclosures on the subject of the vacant lands within the 15 and 20 mile limits of certain railroad grants in the State of Iowa, and asking instructions in the premises.

With a view to a full understanding of the subject, I respectfully request that you will report to me what has been done by your office in relation to said land grants, and what instructions, if any, have been given to the local land offices relative thereto.

JAMES HARLAN, *Secretary.*

[Pages 41 and 42, abstract.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *May 30, 1865.*

Hon. JAMES HARLAN,
Secretary of Interior:

153 SIR: Your letter of the 27th inst. is received, requesting a report from this office as to the action taken respecting the land grants referred to in my letter of the 26th inst., under act of 2d June, 1864, and, in compliance therewith, I have the honor to submit the following:

Shortly after the passage of the act of June 2, 1864, amending "An act making a grant of land to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," approved May 15, 1856, at the request of the delegation in Congress from Iowa this office dispatched instructions to the several land offices in that State, June 16, 1864, by direction of the Secretary of the Interior, to withdraw from market all the vacant public lands until the several grants under said act could be adjusted.

2. Those instructions were subsequently modified so as to allow the State to complete the selections under the agricultural act, to permit several counties to locate swamp indemnity and also to allow homestead and pre-emption entries.

3. Under date of 25th June, 1864, this office expressed to the Hon. Secretary of the Interior its judgment that the act of June 2, 1864, "operates upon all public lands belonging to the United States at the date of said enactment, and lying within the prescribed limits of the several lines of road mentioned, saving rights of prior inception; consequently not only takes hold of the odd but the even numbered sections also."

In view of that opinion, this office can see no objection to compliance with the request of Mr. Steiger, as stated in his letter referred to you with mine of the 26th inst.

In this connection it is deemed proper to refer to letters herewith from the register and receiver at Ft. Dodge and Hon. A. W. Hubbard, upon the subject of restoring the public lands in Iowa to market; these letters having been referred to this office by Geo. C. Whiting, acting chief clerk, the 18th and 19th inst.

It will be seen from the aforesaid instructions of June 16, 1864, to the land offices in Iowa, that no vacant public lands in the State are now subject to ordinary private sale or location, and as the several railroad interests are considered fully protected by law, I can see no advantage
154 to be gained, either by the State or the General Government, in continuing to withhold these lands from market, but, on the contrary, think that both interests would be promoted by their restoration to sale, as requested in the letter referred to, so as not to interfere with the grants under acts of June 2 and May 12, 1864.

J. M. EDMUNDS,
Commissioner.

[Page 43, abstract.]

DEPARTMENT OF INTERIOR,
Washington, D. C., June 2, 1865.

SIR: I herewith return your letters of 2d April and 2d May last, from the register and receiver at Fort Dodge, Iowa, and the Hon. A. W. Hubbard, respectively, recommending the restoration to market of certain lands in Iowa, and to inform you that the views expressed in your communication in relation thereto, dated the 30th ultimo, are approved and you are requested to give effect to them.

JAMES HARLAN, *Secretary.*

[Page 43, abstract.]

DEPARTMENT OF THE INTERIOR,
June 7, 1865.

REGISTER and RECEIVER,
Council Bluffs, Iowa:

GENTLEMEN: On the receipt hereof you will allow no entries for homesteads, pre-emptions, or locations, for any purpose, in your district on the even-numbered sections lying within the 15-mile limits as fixed under the act of the 15th of May, 1856, and shown on the diagram heretofore furnished your office, nor upon any of the sections, odd or even, within the additional 5 miles or 20-mile limits on each side thereof, granted by act of June 2, 1864, of the following railroads, viz: the Burlington and Missouri River Railroad, the Mississippi and Missouri River Railroad, the Cedar Rapids and Missouri River Railroad.

In the mean time any entries or locations which have been permitted by you under existing instructions, subsequent to the 2d of June, 1864, except those of prior inception, will be held in suspense for investigation and adjustment at this office.

You will please acknowledge receipt of this letter.

J. M. EDMUNDS,
Commissioner.

155 The entries of Benjamin Herring and Elijah W. Brooks were made May 31, 1865; that of David Greenstreet, March 20, 1865; that of Louis Iddings, June 12, 1865. (Pages 106, 108, 110, abstract.)

[Page 126, abstract.]

WASHINGTON, *July* 5, 1865.

Hon. JAMES HARLAN,
Secretary of Interior:

SIR: I have the honor to transmit herewith the letter of W. W. Walker, esq., vice-president C. R. & M. R. R. R., addressed to you on the 19th, together with the accompanying map, duly authenticated, of the amended route of said road from Cedar Rapids to the Missouri River, which I beg leave to place on file as the basis of the adjustment of the additional grant of 2d of June, 1864.

The corporate seal of the company appears to have been inadvertently omitted on the certificate. I have this day written for a seal with authority to attach it, so as to obviate the necessity of returning the map for that purpose.

WM. T. STEIGER, *Agent, &c.*

[Page 127, abstract.]

DEPARTMENT OF INTERIOR,
Washington, D. C., July 10, 1865.

SIR: I enclose herewith, for your information and appropriate action in relation thereto, a map, filed in this Department, by Wm. T. Steiger, for W. W. Walker, vice-president, showing "the general route of the Cedar Rapids and Missouri River Railroad."

You will please return the map to this Department for filing.

JAMES HARLAN, *Secretary.*

The COMMISSIONER OF GENERAL LAND OFFICE:

On the 11th day of July, 1865, there was filed in the General Land Office at Washington, D. C., a map of the Cedar Rapids & Mo. River Railroad. (Exhibit 26, plaintiffs' evidence, page 49, abstract.)

156 Said map indicates the line of said railroad from Cedar Rapids to the Missouri River, terminating at a point nearly opposite Missouri Valley, and about 18 miles north of Council Bluffs.

The endorsement on said map is not in appellants' abstract, and is as follows: (Page 1055, transcript.)

"Map of the Cedar Rapids and Missouri River Railroad, June 19th, 1865. W. W. Walker, chief engineer. Office of the Cedar Rapids and Missouri River Railroad Company, Cedar Rapids, Iowa. We hereby certify that this map was adopted by the board of directors of said Company, at their meeting held this day at their office in Cedar Rapids, as the map of the general route of their road from Cedar Rapids to the Missouri River, by the unanimous adoption of the following resolution, viz:

"'Resolved, That the route indicated on said maps shall be adopted as the general route of said road, and that the said maps (being this map and a duplicate of it) shall be certified to by the president or vice-president and

secretary, under seal of the company, one of said maps to remain in the office of the company and the other to be deposited with the Secretary of the Interior, in accordance with the acts of Congress. As witness the signature of the vice-president and secretary and seal of the company, this 19th day of June, 1865.

"'WILLIAM W. WALKER,
"'*Vice-President.*

"'W. W. WALKER, *Secretary.*'"

Filed in General Land Office, July 11th, 1865.

To which is added a certificate of Commissioner of General Land Office, duly authenticating said map as an accurate copy of the original on file in his office, said certificate being under the seal of the General Land Office.

Exhibit 27, introduced by appellants, page 49, abstract, is a map showing the termini of the road the same as preceding map—and that the compromise 15-mile limits south, under the act of 1856, became the compromise 20-mile limits under the act of 1864. It shows the original
157 Iowa Central Air Line route from a point about 4 miles northeasterly from Cedar Rapids to the Missouri River, in Monona County, as well as the amended route from Cedar Rapids to the Missouri River, in Harrison County. It also shows the 6 and 15 mile limits under the act of 1856, and the 20-mile limit under act of 1864. It does not purport to be a copy, but is certified to by Commissioner of General Land Office as correctly delineating the original and amended lines.

Exhibit 58 is a map introduced by appellees, pages 122 and 123, abstract. It is similar to map Exhibit 27 introduced by appellants except in the following particulars, to wit: It bears the certificate of the adoption of the amended line by appellants' board of directors, which is endorsed on Exhibit 26, and set out page 12 hereof. It indicates the Onawa Branch contemplated by the act of June 2, 1864, by line E F, not constructed, page 53, abstract; also the so-called Onawa Branch, 6 miles in length, from Missouri Valley to California Junction, line D G, page 53, abstract.

It also shows the map of the Council Bluffs Branch, filed December 19, 1867; transcript, page 1057; abstract, pp. 52, 53, 123, 124, 125.

[Page 96, abstract.]

WASHINGTON, *August* 22, 1865.

Hon. J. M. EDMUNDS,
Commissioner Land Office:

SIR: Since your circular of the instructions of 7th of June, 1865, to registers and receivers of Iowa, forbidding the entry for homesteads and pre-emptions of lands inuring to three of the most southern railroads therein enumerated, which was predicated on my application of the 12th of May, 1865, also ordering the suspension for future examination and adjudication of any interfering entries of this character, I understand that quite a number of such entries have been reported by these officers in the month of May and the subsequent monthly returns.

I am now advised that the Cedar Rapids and Missouri River Railroad Company have procured testimony materially affecting these inter-

158 fering claims, some of which have been placed in the hands of Hon. M. Pomeroy, who will file it in the General Land Office, if he has not already done so. I therefore respectfully request that the suspension may be continued for the present, and that I may be advised whenever the cases are taken up, and that in the mean time I may be furnished with a list of the claimants, showing the tracts claimed, the names of the witnesses, and the dates of settlement, improvement, and occupancy.

With your permission I will prepare the lists so as to save the time of the clerks.

Respectfully, your obedient servant,

WM. T. STEIGER, *Agent, etc.*

By instructions issued by Commissioner of General Land Office to registers and receivers of land offices, dated May 30th, 1866, and approved by Acting Secretary of the Interior June 6th, 1866, appellants were required to appoint agents to select the lands claimed by them in the several land districts of Iowa accruing to them under act of June 2d, 1864—abstract, pp. 115, 116—and in accordance with such instructions agents were appointed to make such selections in the four land districts of Iowa through which said railroad runs—p. 116, abstract.

July 5, 1866, the following notice was issued by Commissioner of the General Land Office:

[Pages 93 and 94, abstract.]

Notice. No. 711. For restoring to market certain lands heretofore withheld from ordinary private entry for the adjustment of railroad grants in the State of Iowa.

Notice is hereby given that public lands which have heretofore been withheld from ordinary private entry for the adjustment of railroad grants in the State of Iowa, to the aggregate quantity of 641,430.15 acres, held at the double minimum price of $2.50 per acre, and 1,627,014.46 acres held at the ordinary minimum of $1.25, will be restored to market, as follows, viz: On Monday, the 17th day of September, 1866, at the land office at Fort Des Moines, 1,772.41 acres, at $2.50 per acre, and 12.385.91 acres, at $1.25 per acre.

159 On Monday, the 1st day of October, 1866, at the land office at Council Bluffs, 18,821.43 acres, at $2.50 per acre, and 2,365.98 acres, at $1.25 per acre.

On Monday, the 15th day of October, 1866, at the land office at Fort Dodge, 102,907.99 acres, at $2.50 per acre, and 145,906.62 acres, at $1.25 per acre.

On Monday, the 29th day of October, 1866, at the land office at Sioux City, 517,928.32 acres, at $2.50 per acre, and 1,466,355.95 acres, at $1.25 per acre.

Lists descriptive of the above lands by legal subdivisions will be retained in the respective land offices above mentioned for the inspection of parties wishing to purchase.

Given under my hand, at the city of Washington, the 5th day of July, 1866.

[SEAL.] J. M. EDMUNDS,
Commissioner of the General Land Office.

[Page 44, abstract.]

DEPARTMENT OF INTERIOR,
GENERAL LAND OFFICE, *July* 6, 1866.

GENTLEMEN: I herewith enclose two descriptive lists of lands in your district heretofore withheld from ordinary private entry for the adjustment of land grants to the State of Iowa for railroad purposes; the one list embracing 18,821.43 acres, held at the double minimum price of $2.50 per acre, the other 236,598, at the ordinary minimum of $1.25.

I also enclose herewith a copy of notice No. 711, of yesterday's date, under which these lands will again become subject to ordinary private entry on Monday, the 1st day of October, 1866, and the lands similarly situated in the other districts of the State at dates therein specified.

You will retain said lists in your office open to the inspection of parties desiring to purchase. The enclosed notice you will cause to be published immediately in some newspapers of general circulation in your district, the publication to be continued at least once a week until the 29th of October next, the latest date fixed in the notice for the lands in any of the districts to be restored to market.

160 Printed copies of the notice will be transmitted to you in a few days for distribution.

J. M. EDMUNDS,
Commissioner.

REGISTER and RECEIVER,
Council Bluffs, Iowa.

[Page 44, abstract.]

DEPARTMENT OF INTERIOR,
GENERAL LAND OFFICE, *Aug.* 23, 1866.

REGISTER LAND OFFICE,
Sioux City, Iowa:

SIR: In reply to your letters of the 14th inst. I have to state that the even numbered sections within the 5, 15, and 20 mile limits of the Cedar Rapids and Missouri River Railroad are not subject to homestead or preemption, whilst all the lands designated in the list of vacant lands sent you are subject to both of said laws.

JOS. S. WILSON,
Acting Commissioner.

In the lists furnished the local officers were lands outside the 20-mile limits of the modified line, but within the 15-mile limits of the original line. (P. 56, abstract.)

The entry of John T. Lake was made Aug. 17, 1866; of Daniel T. Cutler, Aug. 13, 1866; of Patrick Dundon, Aug. 24, 1866. (Pp. 106, 108, 110, abstract.)

[Page 45, abstract.]

DEPARTMENT OF INTERIOR,
GENERAL LAND OFFICE, *September* 20, 1866.

GENTLEMEN: We have a letter from Isaac Cook, commissioner for the

Cedar Rapids and Missouri River Railroad, representing that claims are being allowed to lands granted to the State for the benefit of said road by acts of 1856, and that parties, in virtue of such claims, are entering upon the land and despoiling it of timber, greatly to the damage of the interests of the road, and requesting instructions to be given to the proper officers on the subject.

You are therefore advised that all claims having inception subsequent to the location of the line of road, when the right inures to the
161 State, should be rejected, and if any such have been allowed, you are instructed to notify the parties that they will be cancelled.

Where parties claim the right of pre-emption in virtue of actual settlement and cultivation prior to the grant to the State, you will notify the State authorities or representatives of the road as to the claim, and of the time and place of taking proof in support of said claim.

The act of June 2, 1864, grants to the several roads therein mentioned, in the State of Iowa, all the vacant and public lands—odd and even numbered sections—within the limits of each 20 miles; hence no homestead entry or pre-emption claim which was initiated after the passage of said law will be approved. You will, therefore, disallow all such claims, and notify parties who have been permitted to make them heretofore that said claims will be cancelled by this office.

You will please promptly report particulars in each and all cases in which you may take action under these instructions.

JOS. S. WILSON, *Commissioner.*

REGISTER and RECEIVER,
Council Bluffs, Iowa.

This letter is referred to in pages 60 and 61 of abstract as dated April 20th, 1866, but the true date is shown by certified copy, page 45, abstract, and Burdette's reference to it, page 56, abstract, to be September 20th, 1866. Mistake occurred in exhibit to Burdette, pamphlet.

[Page 61, abstract.]

DEPARTMENT OF INTERIOR,
GENERAL LAND OFFICE, *Sept.* 21, 1866.

REGISTER and RECEIVER,
Sioux City, Iowa:

GENTLEMEN: The Secretary of the Interior, under date of the 20th inst., has instructed us to order a suspension of the restoration to market of the public lands in the State of Iowa for one year from the date of our notice, viz, July 5, 1866. You are therefore directed not to make the offering as per our letter of instructions dated 6th, and notice dated 5th of July, 1866, but to hold the lands, as heretofore, subject to pre-
162 emption and homestead settlement only for the time mentioned, viz, one year from the 5th of July, 1866, unless otherwise ordered. This order is not to be construed as excluding the location of swamp land indemnity certificates, or selections by the State in satisfaction of the grant under the act of July 2, 1862, for the benefit of agricultural colleges and the mechanic arts, which you will allow as heretofore.

You will please give publicity to this order in some newspaper published in Sioux City.

JOS. S. WILSON, *Commissioner.*

Copies of above letter sent to registers and receivers at Council Bluffs and Fort Dodge.

The following statement shows when the lands were selected by the company and the number of acres selected under act of June 2, 1864, up to October 15, 1875 (page 125, abstract):

July 28, 1865	4,395	acres.
August 15, 1866	139,565	"
October 22, 1866	191,438	"
August 29, 1867	41,999	"
March 31, 1872	2,258	"
July 26, 1872	1,206	"
November 16, 1874	859	"
December 12, 1874	3,274	"
December 21, 1874	4,707	"
October 15, 1875	406	"

The exact amount selected since that time not shown by the evidence.

The approvals up to November 16, 1875, were as follows (page 54, abstract):

326,721.71 acres, July 18, 1868.
15,684.97 acres, April 20, 1869.
906.41 acres, September 2, 1872.
480 acres, November 14, 1873.
2,218.69 acres, July 26, 1874.
3,265.22 acres, April 6, 1875.
406 acres, November 16, 1875.

163 Making in all up to November 16, 1875—
782,280 acres under act of 1856,
349,683 acres under act of 1864,

1,131,963 acres.
11,191 acres between November 16, 1875, and the date at which Van Deventer gave his testimony (page 62, abstract), making—

1,143,154 acres in all

[Pages 113 and 114, abstract.]

DEPARTMENT OF INTERIOR,
GENERAL LAND OFFICE, *August* 5, 1867.

GENTLEMEN: In reference to lands in your district which were withdrawn from private entry for railroad purposes the 23d of June, 1864, ordered to be restored thereto on October 1, 1866, per printed notice No. 711, and the restoration of which was postponed by order of the Secretary of the Interior for one year from July 5, 1866, the date of the notice, as per our letter to your office of September 21, 1866, I have to state that the period of the postponement expired on the 5th ultimo, but the lands will not be subject to ordinary private entry until the usual thirty days' public notice thereof shall be given by advertisement in some newspaper of general circulation in your district. This you will do without delay, and

forward a copy of the newspaper containing the advertisement to this office.

JOS. S. WILSON.

REGISTER and RECEIVER, *Council Bluffs.*

[Page 114, abstract.]

DEPARTMENT OF INTERIOR,
GENERAL LAND OFFICE, *October* 21, 1867.

GENTLEMEN: In answer to your letter of the 10th inst., respecting the destruction by fire of certain public property, etc., pertaining to your land district, I have to state that duplicates of the lists of swamp and railroad selections are now being prepared, and will be forwarded to you at
164 the earliest date practicable. Upon your advising this office of the particular kind of blanks required they will be promptly transmitted.

JOS. S. WILSON, *Commissioner.*

REGISTER and RECEIVER, *Council Bluffs, Ia.*

[Page 113, abstract.]

DEPARTMENT OF INTERIOR,
GENERAL LAND OFFICE, *November* 1, 1867.

SIR: Referring to your letter of the 21st ult. I have to state that the newspaper, Council Bluffs Weekly Nonpareil, therein alluded to as embracing a public notice of the time upon which certain lands therein described, situated in your district, will be brought into market, has not reached here. You will be pleased to forward a copy of it by return mail.

In your answer to this letter will be pleased to refer to it as C, by its date.

JOS. S. WILSON, *Commissioner.*

FRANK STREET, *Register at Council Bluffs, Ia.*

[Page 46, abstract.]

DEPARTMENT OF INTERIOR,
GENERAL LAND OFFICE, *November* 11, 1867.

REGISTER and RECEIVER,
Council Bluffs Land Office, Iowa:

GENTLEMEN: Pursuant to your request of the 2d inst. I enclose herewith a copy of two lists of vacant lands which you proposed this day to restore to ordinary private entry at $2.50 and $1.25 per acre; as the time for offering has elapsed, I have to request that you give at least thirty days' notice, and advise this office to that effect. Said lists are to take the place of the two reported destroyed by fire last June.

JOS. S. WILSON, *Commissioner.*

Exhibit 44, referred to on page 111, abstract, is a copy of list of vacant lands in Monona County transmitted with letter of Nov. 11, '67, certified to by register and receiver, and contains 20,163.73 acres of
165 land north of the twenty-mile limits of the modified line, but within the original fifteen-mile limits. (Page 635, transcript.)

[Pages 46 and 47, abstract.]

WASHINGTON, *December* 19, 1867.

Hon. JOSEPH WILSON,
Commissioner General Land Office:

SIR: I have the honor to enclose a map showing the western terminus of the Cedar Rapids and Missouri River Railroad, Iowa, which I respectfully request may be attached to the map of definite location heretofore filed.

JOHN I. BLAIR,
Prest. C. R. & M. R. R. Co.

(Please acknowledge, directed to me, Blairstown, N. J.)

March 18, 1869, the appellant C. R. & M. R. R. R. filed in the district court of Woodbury County a petition in equity vs. B. F. Smith et al., alleging among other things the issuance of instructions from the Department approved by the Acting Secretary of the Interior June 6, 1866, requiring it to select the lands claimed in the several land districts of Iowa accruing to it under act of June 2, 1864, the appointment of such agents, the selection of such lands, the approval of selections in the Council Bluffs and Sioux City districts, and certification of lands selected therein, and that selections in other districts had not yet been acted upon, and averring on information that the lands certified as aforesaid included all the lands in said Council Bluffs and Sioux City districts which the Secretary of the Interior would or ought to certify to said appellant under act of June 2, 1864. (Pp. 115 and 116, abstract.)

July 22, 1869, an amendment was filed to said petition alleging that of the 60,000 acres which the original petition averred had been selected in the Fort Dodge and Des Moines districts only 17,496.47 acres had been approved. (Pp. 118 and 119, abstract.)

These selections were acted upon April 20, 1869. (Page 84, abstract.)

Between April 20, 1869, and June 9, 1869, Steiger, agent for the adjustment of the grant at Washington, prepared lists of selections of land omitted from former lists for each district. (Page 84, abstract.) The Council Bluffs list aggregating 31,846.49 acres, all outside the
166 twenty-mile limits and claimed under act of June 2, 1864, and 6,243.91 acres, odd sections, claimed under the act of 1856. (See list, being Exhibit F of Steiger's deposition, page 523, transcript.)

This list was never presented or filed in the local land office or in the Department. (Pp. 84 and 85, abstract.)

June 9, 1869, his employment by the company ceased for a time. (Abstract, pages 84 and 93.) The letter from Blair to Steiger on page 93 of abstract, was dated June 9, 1869, instead of January 9, 1869. (518, transcript. He still corresponded with the officers of the company until some time in 1870, when he became agent and attorney for both corporations, appellants herein. (Page 89, abstract.)

In May, 1870, he took up the old lists for selection, prepared in 1869, and some time between May and September, 1870, he found that all the vacant land in even-numbered sections north of the twenty-mile line, Council Bluffs district, which had been included in his list of 1869 for selection, had been restored to market in 1867. (Page 84, abstract.)

In preparing his lists for selections, about Sept. 20, 1870, he concluded it would be useless to select any of the lands north of twenty-mile line until the error of their restoration could be inquired into and corrected, for, of course, if selected, being in conflict with numerous standing homesteads and pre-emptions made under the public notice the land officers would not allow them. (85, abstract.)

Of the selections made in the Sioux City district by Thomas J. Stone, October 22, 1866, and which were approved July 18, 1868, 125,649.94 acres were north of the twenty-mile line. (Page 83, abstract.)

He erased them from his list as shown by the red lines on the abstract therefrom annexed to his deposition, which is an exact copy from his old Council Bluffs original list, including penciled memoranda in the margin, of conflicting homesteads considered invalid, including the homestead of Benjamin Herring. (Page 85, abstract.) It also includes the home-

167 stead of Daniel T. Cutler. (Page 523, transcript.) Opposite numerous other tracts is noted in pencil the fact of homestead entries which he considered invalid. (Page 523, transcript.)

The abstract from the list shows only a small portion of the land stricken from the latter. (Page 523, transcript.)

On the map, also marked "Exhibit F," attached to the abstract from said Council Bluffs list, is the following: "Monona County, Iowa." (Here follows a red stain, immediately followed by the words "indicates lands north of 20-mile limits, struck out of Steiger's list of 1869, on the 20th September, 1870." (P. 524, transcript.) The red stains referred to show that all the lands in controversy were stricken from said list. (P. 524, transcript.)

They also show that 19,000 acres of the lands stricken out is the same land included in the list of vacant lands in Monona County of November 11, 1867, referred to in abstract, p. 111, and which is found on pp. 635 and 636.

On the abstract from Council Bluffs list referred to, on p. 85, and also on p. 94, abstract, and found on page 523, transcript, is the following endorsement, to wit: "October 22, 1870. After preparing the above list I found that the great body of the above lands were restored to market by public notice 711, issued in 1866, but postponed until 1867 by order of Secretary (see Commissioner's letter), to wit, lands outside of twenty-mile limits, but within the old granted limits. I propose to respect homestead and other entries outside of twenty miles, but not within, and select all within 20 miles (contesting homesteads), and no selections in even sections north of 20-mile limits, which the office holds are not granted, and have restored to market. All others struck out from the above." He testifies that as soon as practicable he put the new lists in form, and after some delay for the reception of the usual certificates of his agency to be attached thereto, he executed and forwarded them to the company March 18, 1871. (P. 85, abstract.)

This list is referred to on p. 86, abstract, as his selections of March 18, 1872.

168 September 2, 1872, the Council Bluffs list of 11,924.20 acres, after being reduced to 960 acres, was approved. (Page 85, abstract.) The cases brought before the Department prior to 1874 are enumerated on page 86, abstract. (See Steiger's answer to cross-interrogatory 6, p. 91, abstract.)

The first case vs. J. B. Havens, the date of entry is not given. It was rejected and decision affirmed by the Secretary, 1874. The next case vs. J. D. Havens, the homestead entry was not made until Aug. 7, 1874. (2d page of Exhibit G, attached to Steiger's deposition, page 525, transcript.) Both of these tracts were in township 87, range 41, not in Monona County or in the Council Bluffs district; same exhibit, same page. The other entries therein referred to are as follows: Johnson L. Depuy, homestead entry made May 1, 1873; rejected September 11, 1874; affirmed by Secretary September 18, 1875; approved to road November 16, 1875, and—

Name of homesteader.	Date of entry.	Date of rejection.	Date of affirmance.	Approval to railroad.
Hiram W. Needles	April 29, '73	Sept. 11, '74	Sept. 11, '75	Nov. 16, '75
Wm. P. Jenness	Feb'y 4, '73	Sept. 11, '74	Sept. 18, '75	Nov. 16, '75
Geo. Castle	Feb'y 9, '73	Sept. 11, '74	Sept. 18, '75	Nov. 16, '75

(Same exhibit, pages 2 and 3, page 525, transcript.)

All the efforts made to ascertain what action was being taken by the Department relative to the adjustment of appellants' grant and the allowance of homestead and pre-emption entries within the 15-mile limits are stated by Steiger fully, not in a general way, but explicitly and in detail, with dates, under the 4th interrogatory in chief, pp. 82 to 89, abstract. See answers to cross-interrogatories 3 and 4, page 90, abstract.

All the letters to the Department and responses are attached to his deposition marked for identification. (Page 90, abstract.)

After the decision of cases above mentioned, it was considered the proper time to bring all these claims regularly before the Department for adjudication and final action. (Page 86, abstract.)

169 Steiger therefore prepared for selection a complete list of them, including other scattering tracts; that for Des Moines, including (then and since) Council Bluffs district, aggregating 26,091.73 acres, which he transmitted to Iowa December 13, 1875, and they were, after making some additions, regularly selected and filed by the company's agent, Wm. Ragan, March 16, 1876.

The registers and receivers struck out all tracts covered by standing homesteads, only allowing and certifying to the road tracts clear of such incumbrances. (Pp. 86 and 87, abstract.)

The amount selected at that time in the Sioux City (which had not then been removed to Des Moines) or Fort Dodge districts, is not stated. Exhibit 43, referred to on page 111, abstract, shows that none of the lands in controversy were selected by appellants until March 16, 1876.

It is a duly certified copy of all selections made by appellant in Monona County, Iowa. (Pp. 620 and 634, transcript.) It shows that with the exception of a few tracts, amounting in all to two and a half sections, none of the lands included in the vacant list for Monona County, of November 11, 1867, and which were stricken out of Steiger's list in October, 1870, as appears from the red stains on his map, were selected by appellants until March 16, 1876. (Pp. 620 and 634, transcript.)

The selections of 37,220.40 acres in Monona County by Street were made August 15, 1866, instead of 1876, as stated in the abstract. (Pp. 620 and 634, transcript.)

The cases brought by appellants in all the counties, of which these nine are samples, involve 36,291 acres. (Pp. 76 and 77, abstract; pp. 132 and 439, transcript.) The first batch in Monona County involves 6,095 acres; in second batch, Monona County not shown. The Cedar Rapids and Missouri River Railroad, as constructed from Cedar Rapids to the point on the Missouri River opposite Omaha is 271.6 miles. (Pp. 52, 62, and 97, abstract.) No road was ever built east of Cedar Rapids by appellants
170 except the Lyons plug, which extends from Lyons to Clinton, and is 2.41 miles in length. (Page 76, abstract.) Cedar Rapids is between 81 and 82 miles west of Clinton. (P. 76, abstract.)

No road was ever built by appellants west of Missouri Valley on the route adopted June 19, 1865, as shown by the map filed July 11, 1865. (P. 99, abstract.)

About July 1, 1864, the road was built to Nevada (p. 97, abstract) about 100 miles from Cedar Rapids. (P. 117, abstract.) In 1863, road was completed to State Center, 85 miles from Cedar rapids. (P. 117, abstract.) From Missouri Valley to bank of Missouri River opposite Omaha is about 24 miles. (P. 137, abstract.)

William T. Boyd's entry was January 4, 1868. (P. 106, abstract.) He proved up in less than five years; was a soldier. (P. 128, abstract.)

The 80 of Catharine M. Wooster was first taken as a homestead by her husband July 2, 1867, and October 5, 1869, he relinquished homestead right and entered the land in her name for cash. (Pp. 106 and 135, abstract.)

The original notices in the nine cases were served by Wm. Ragan and H. L. Phelps (not officers) on the 12th, 13th, 16th, 17th, and 18th days of January, A. D. 1877. Transcript does not contain original notices. Will have them certified up by amendment to transcript if date of service is disputed.

The act of Congress of April 21st, 1876, was introduced in evidence by defendants. (Page 209, transcript.) Reporter has it act of April 21, 1856. It is also plead by defendants in amendment to answer. (Page 12, abstract.)

The other facts are sufficiently shown by appellants' abstract.

171 *Addenda.*

Boyd's tract was homesteaded by Moses D. Clark, April 20, 1865, and cancelled Dec. 23, 1867. (Page 570, transcript.)

The petition filed in Woodbury district court, referred to on page 21 hereof, and pages 115 and 116 appellants' abstract, was signed by Isaac Cook as attorney for plaintiffs. (P. 676, transcript.)

Form B, referred to in the circular of instructions, page 120, appellants' abstract, is as follows:

UNITED STATES LAND OFFICE, , 186 .

"We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the under the grant to the by act of Congress approved and selected by , the duly authorized agent, and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct. And we further certify that the filing of said list is allowed and approved

* * * nor is there any homestead, pre-emption, State, or other valid claim to any portion of said lands on file or record in this office. We further certify that the foregoing list shows an assessment of the fees payable to us, allowed by the act of Congress approved July 1st, 1864, and contemplated by the circular of instructions dated May 30th, 1866, * * * and that the said company have paid to the undersigned, the receivsr, the full sum of dollars, in full payment and discharge of said fees.

, *Register.*
, *Receiver.*

(Pp. 724 and 725, transcript.)

172 THE CEDAR RAPIDS & MISSOURI RIVER Railroad Co. et al., app'l'ts,
vs.
BENJAMIN HERRING ET AL.

And afterwards, to wit, on the 28' day of October, 1879, the following record entry appears:

THE C. R. AND MO. R. R. AND THE IA. R. R. Land Co., app'l'ts,
vs.
BENJ. HERRING AND EIGHT OTHER LIKE CASES, as appears by the abstract.

Appeal from Monona dist. court.

On this day this cause is submitted to the court on printed argument of counsel as well as oral argument.

173 Supreme court of Iowa.

THE CEDAR RAPIDS & MISSOURI RIVER R. R. Co. and Iowa Railroad Land Co., app'l'ts,
vs.
BENJAMIN HERRING ET AL.

And on the 15th day of December, 1879, the opinion of supreme court in above-entitled cause, affirming the judgment of the Monona district court, was filed, in words and figures as follows, to wit:

THE CEDAR RAPIDS & MISSOURI RIVER R. R. Co. and Iowa Railroad Land Company, app'l'ts,
vs.
BENJAMIN HERRING.

THE SAME
vs.
CATHERINE WOOSTER.

THE SAME
vs.
JOHN T. LAKE.

THE SAME
vs.
DANIEL T. CUTLER.

174 THE SAME
vs.
FRANK DAVIDSON.

THE SAME
vs.
LEWIS IDDINGS.

THE SAME
vs.
ELIJAH W. BROOKS.

THE SAME
vs.
W. T. BOYD.

THE SAME
vs.
DAVID GREENSTREET.

Appeal from Monona district court.

Substantially the same questions are involved in all these cases, and they were submitted on a single abstract. The actions are in equity, the object being to have determined conflicting titles to real estate. The pl't'ffs claim title under the acts of Congress approved May 15th, 1856, and June 2d, 1864, and certain legislation of the State granting lands in aid
175 of the construction of railroads. The def'ts claim to be purchasers directly from the Government or to have become entitled to the lands under the homestead acts of Congress, and all claim to be the holders of patents or to be entitled thereto. The lands in controversy are all situate in the even-numbered sections. The district court dismissed the petition on the merits, and thereby in effect confirmed the title of the def'ts. The pl't'ffs appeal.

James F. Wilson, I. N. Kidder, Joy & Wright, and E. S. Bailey for appellants.

Monk & Selleck & Platt Smith for appellees.

SEEVERS, *J.*

The act of Congress approved May 15th, 1856, granted to the State of Iowa to aid in the construction of a railroad from Lyons City northwesterly to a point of intersection with the main line of the Iowa Central Air Line Railroad near Maquoketa, thence along said line as near as practica-

ble to the forty-second parallel across the said State to the Missouri River every alternate section of land designated by odd numbers for six
176 sections in width on each side of said road as definitely located. If any of said lands had been disposed of by the General Government there was granted in lieu thereof an equal amount designated by odd-numbered sections within fifteen miles of the road as definitely fixed. The lands in controversy are situate within the fifteen-mile limit. In July, 1856, the State granted said lands to the Iowa Central Air Line Company for the purpose contemplated in the act of Congress. Said company failed to construct the road, and in March, 1860, the State resumed the grant, and in a few days thereafter regranted said lands to the Cedar Rapids & Missouri River Railroad Company, by whom it will be conceded the road contemplated by the act of Congress was constructed, and whatever title or right to said lands vested in said company under said act of Congress, the State legislation aforesaid, and the construction of the road, now belong to the pl't'fs. That the lands were granted by Congress to aid in the construction of a railroad from the Mississippi to the Missouri River is undoubtedly true. Such a road, however, was
177 not constructed in reliance on the grant. For at the time the grant to the Air Line Company was resumed by the State a railroad had been constructed from Clinton, on the Mississippi River, some two or three miles south of Lyons City, westwardly to Cedar Rapids.

When the State made the grant to the pl't'ff this fact was recognized, and the State provided that the lands were to be used for and devoted by the Cedar Rapids Railroad Company to the building of a railroad from Cedar Rapids or Marion to the Missouri River. This is all the State did, conceeding it had the power to divert the lands, so to speak, to the construction of a railroad upon a different route from that mentioned in the act of Congress. The original line in aid of which the grant was made by Congress was about three hundred and forty-five miles in length, and the road constructed by the pl't'ffs is about seventy-five miles shorter than this. Clearly the State did not have the power, without the assent of Congress, to grant the lands in aid of the longer to the shorter road; that is to say, under the act of Congress of May 15th, 1856, lands could only be
178 drawn for the constructed road, and the State could not by legislation change this result. Because of this fact and the necessity, apparent or real, for modifying the line, the act of Congress approved June 2d, 1874, was enacted. The Congressional policy, so far as this State is concerned, has been uniform in granting lands to aid in the construction of railroads. Without deviation, we believe, such policy has been to grant a certain named and designated quantity of lands per mile of constructed road. The pl't'ffs insist this policy and uniformity was departed from in the act of June, 1864, & that they are entitled for constructing a road 271.6 miles long to all the lands that had been previously granted by Congress to aid in the construction of a road 345 miles in length. The material portion of said act is as follows: "That the Cedar Rapids & Missouri River Railroad Company, a corporation established under the laws of the State of Iowa, & to which the said State granted a portion of the land mentioned in the title of this act, may modify or change the location of the uncompleted portion of its line, as shown by the map thereof now on file in the General Land Office of the

United States, so as to secure a better and more expeditious line to the Missouri River, and to a connection with the Iowa branch of the Union Pacific Railroad, and for the purpose of facilitating the more immediate construction of a line of railroads across the State of Iowa to connect with the Iowa branch of the Union Pacific Railroad Company aforesaid, the said Cedar Rapids and Missouri River Railroad Company is hereby authorized to connect its line by a branch with the line of the Mississippi and Missouri Railroad Company, and the said Cedar Rapids & Missouri River Railroad Company shall be entitled for such modified line to the same lands and to the same amount of lands per mile, and for such connecting branch the same amount of land per mile as originally granted to aid in the conditions and forfeitures mentioned in the original grant."

It will be seen the company was authorized: 1. To modify its line so as to secure a better and more expeditious * * * connection with the Iowa branch of the Union Pacific Railroad; and, 2, to connect its line by a branch with the Mississippi and Missouri Railroad, for the construction of which it was entitled to receive lands. This branch has not been constructed and no lands are claimed therefor. We are unable to discover any additional powers than the above, or that there was an additional grant of lands made by that act, or that the act of May 15, 1856, was modified in any respect material to this controversy unless it is contained in the following language: That said company "shall be entitled for such modified line to the same lands and to the same amount of lands per mile as originally granted in aid of the construction of its main line." We think the words "per mile" are words of limitation, and control, qualify, and restrain the words "same lands" and "same amount of lands," and that the clause in question should be read & construed as if it had been written "as the same lands per mile, and to the same amount of lands per mile as originally granted to aid in the construction of its main line." Such a reading makes the act consistent with the policy of Congress, which, as before said, we believe has never been departed from, so far as this State is concerned, in making grants of lands to aid in the construction of railroads, and that is to give so much land per mile of constructed road. No instance has been brought to our attention, and we believe none such exists, when Congress has not granted a fixed quantity per mile, or where a gross quantity of land has been granted in aid of a constructed road, and this would be the practical effect if the act of Congress of June, 1864, is so construed as to give the Cedar Rapids Company lands for the original line when it constructed only a portion of such line. If the Congressional intent had been as claimed by the pl't'fs it would have been expressed, we think, in clear and unmistakable language, such as "all the lands heretofore granted to aid in the construction of the original line." There are other parts of the act which the pl't'ffs insist aid the construction claimed by them. It is not deemed necessary to particularly refer thereto, as in our opinion the intent of Congress quite clearly appears when a correct reading of the clause in question is reached. One of the conditions of the grant made by the State was that the Cedar Rapids Company should construct the "Lyons Plug." This was done and the pl't'ffs insist they are entitled to lands therefor. We think not, for the reason no lands were granted

to the company for that purpose. Congress, in the act of 1864, required said co. to construct what may be designated as the Onawa Branch; a portion of this, it is said, has been constructed. Conceding this to be true we do not think the pl't'ffs are entitled to lands therefor, because the whole branch or road contemplated by Congress has not been constructed. Beside this, if there is any evidence tending to show that lands were ever selected or claimed until now for the construction of such branch it has escaped our notice.

The next question is: Whether the pl't'ffs have received all the lands to which they are entitled for the modified or constructed line? We incline to think they have not, but the quantity they are entitled to in excess of that received does not exceed five thousand acres, and we think not that much. More lands have been selected than have been certified, and the former exceeds the quantity the pl't'ffs are entitled to. Whether
183 all or any porti'n of the lands selected will be certified to the def'ts by the General Government, we have no means of knowing; but think it devolved on the pl't'ffs to show that the lands selected had been disallowed, abandoned, or at least in some manner released from the claim made thereto before other lands could be selected in lieu thereof. It is conceded, as we understand, that if the grant can be filled from the odd-numbered sections, the pl't'ffs are not entitled to any lands in even-numbered sections, and there is no evidence tending to show that the odd-numbered sections within the limits of the grant have been exhausted, and this, we think, the pl't'ffs were required to establish before the even-numbered sections can be resorted to for the purpose of supplying the deficiency.

The result is that the judgment of the district court must be affirmed.

184 THE CEDAR RAPIDS & MISSOURI RIVER R. R. Co. et al., app'l'ts,
vs.
BENJAMIN HERRING ET AL.

And on the 15th day of December, 1879, appears the following record entry, to wit:

THE CEDAR RAPIDS AND MO. RIVER RAILROAD Co. and the Iowa Railroad Land Co., app'l'ts,
vs.
BENJAMIN HERRING.

THE C. R. & M. R. R. R. CO. AND THE IOWA R. R. Land Co., app'l'ts,
vs.
CATHERINE M. WOOSTER.

THE C. R. & MO. R. R. R. Co. & IA. R. R. Land Co., app'l'ts,
vs.
JOHN T. LAKE.

THE C. R. & MO. R. R. R. CO. & IA. R. R. LAND CO., app'l'ts,
vs.
DANIEL T. CUTLER.

THE C. R. & MO. R. R. R. CO. & IA. R. R. LAND CO., app'l'ts,
vs.
PATRICK DONDON.

185 THE C. R. & MO. R. R. R. CO. & IA. R. R. LAND CO., app'l'ts,
vs.
LEWIS IDDINGS.

THE C. R. & MO. R. R. R. CO. & IA. R. R. LAND CO., app'l'ts,
vs.
ELIJAH W. BROOKS.

THE C. R. & MO. R. R. R. CO. & IA. R. R. LAND CO., app'l'ts,
vs.
WM. T. BOYD.

THE C. R. & MO. R. R. R. CO. & IA. R. R. LAND CO., app'l'ts,
vs.
DAVID GREENSTREET.

Appeal from Monona district court.

In this cause, the court being fully advised in the premises, file their written opinion affirming the judgment of the district court.

It is therefore considered by the court that the judgment of the court below be and it hereby is affirmed, and that a writ of procedendo issue accordingly. It is further considered by the court that the appellants pay the costs of this appeal, taxed at $, and that execution issue therefor.

186 THE C. R. & MO. R. R. R. CO. & IOWA R. R. LAND CO., app'l'ts,
vs.
BENJAMIN HERRING.

And now, on this 12th day of February, 1880, the plaintiffs file in the office of the clerk of the supreme court their petition for writ of error in this court, with order of chief-justice in words and figures as follows, to wit:

Supreme court of the State of Iowa.

THE CEDAR RAPIDS & MISSOURI RIVER RAILroad Company & the Iowa Railroad Land Company
vs.
BENJAMIN HERRING.

To the hon. the chief-justice of the supreme court of Iowa:

The petition of the Cedar Rapids & Missouri River Railroad Company and the Iowa Railroad Land Company, plaintiff above named, respectfully shows that in the judgment and decision of the above-entitled cause by the supreme court of Iowa, there was drawn in question the construction of certain statutes of the United States, and the said judgment & de-
187 cision were against the title, right, and privilege claimed by petitioners under the same.

Your petitioners therefore pray your honor to examine the record in said suit herewith presented, and therefor allow a writ of error in said cause from the Supreme Court of the United States to the supreme court of Iowa, pursuant to the acts of Congress of the United States in such cases made and provided.

JOY & WRIGHT,
E. S. BAILEY,
Attorneys for Petitioners.

The writ of error as within prayed is allowed this seventh day of February, 1880.

AUSTIN ADAMS,
Chief Justice of the Supreme Court of Iowa.

188 THE C. R. & MO. R. R. R. & IA. R. R. Land Co., app'l'ts,
vs.
BENJAMIN HERRING.

And on the 12th day of February, 1880, appears the bond in said case in words and figures as follows, to wit:

Supreme court of Iowa.

THE CEDAR RAPIDS AND MISSOURI RIVER Railroad Company and The Iowa Railroad Land Company
vs.
BENJAMIN HERRING.

Know all men by these presents that we, the Cedar Rapids and Missouri River Railroad Company and the Iowa Railroad Land Company, as principals, and Horace Williams and J. Van Denuto, of Clinton, Clinton County, Iowa, as sureties, *and* are held and firmly bound unto the said Benjamin Herring in the sum of one thousand dollars, to be paid to said Benjamin Herring, his executors and administrators; to which pay-

ment well and truly to be made we bind ourselves, and each of us,
189 jointly and severally, and our and each of our successors and assigns, executors, and administrators, firmly by these presents. Sealed with our seals and dated this February sixth, A. D. 1880.

Whereas the above-named Cedar Rapids and Missouri River Railroad Company and the Iowa Railroad Land Company have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the supreme court of the State of Iowa:

Now, therefore, the condition of this obligation is such that if the above-named Cedar Rapids and Missouri River Railroad Company and the Iowa Railroad Land Company shall prosecute their writ of error to effect, and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

CEDAR RAPIDS & MISSOURI RIVER R. CO.,
By E. S. BAILEY, *Its Att'y.*
IOWA RAILROAD LAND CO.,
By E. S. BAILEY, *Its Att'y.*
190 HORACE WILLIAMS.
J. VAN DEVENTER.

Signed & sealed in presence of—
A. LIVINGSTON SCHUYLER.

STATE OF IOWA,
Clinton County, ss:

Horace Williams and J. Van Deventer, being each duly sworn, each for himself says that he is a resident of the State, and is worth more than one thousand dollars beyond the amount of his debts, and that he has property in the State liable to execution to the amount of one thousand dollars and upwards.

HORACE WILLIAMS.
J. VAN DEVENTER.

Subscribed in my presence and sworn to before me, the undersigned, a notary public in and for Clinton County, Iowa, by the above-named Horace Williams and J. Van Deventer, each for himself.

In witness whereof I have hereunto set my hand and notarial seal this sixth day of February, A. D. 1880.

[SEAL.] C. W. CHASE,
Notary Public.

The within bond is approved.
Feb'y seventh, 1880.

AUSTIN ADAMS,
Chief Justice of Sup. Ct. of Iowa.

191 Supreme court of Iowa.

THE CEDAR RAPIDS & MISSOURI RIVER RAILroad Co. et al., app'l'ts,
vs.
BENJAMIN HERRING.

And on the 12th day of February, 1880, there was filed in this cause the original writ of error in words and figures as follows:

192 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the supreme court of the State of Iowa, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, between The Cedar Rapids and Missouri River Railroad Company and the Iowa Railroad Land Company, plaintiffs, and Benjamin Herring, defendant, wherein was drawn in question the construction of certain statutes of the United States, and the said judgment and decision were against the title, right, and privilege claimed by said plaintiffs under the same, a manifest error hath happened to the great damage of the said plaintiffs, as by their said complaint appears, we being willing that error, if any hath been, should be duly corrected and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the

193 Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceeding aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States this the 11th day of February, A. D. 1880.

[SEAL.] EDWARD R. MASON,
Clerk U. S. C. C., Dist. of Iowa.

(Endorsed:) Supreme Court United States. Cedar Rapids and Missouri River Railroad Co. vs. Benjamin Herring. Writ of error. Filed Feb. 12, '80. E. Holmes, clerk sup. court. E. S. Bailey, Clinton, Ia., for pl'ffs.

194 THE CEDAR RAPIDS & MO. R. R. R. Co. et al.
vs.
BENJAMIN HERRING.

And on this 10th day of March, 1880, the citation in this cause was filed with proof of service of same.

UNITED STATES OF AMERICA:

To Benjamin Herring, greeting:

You are hereby cited and admonished to appear at the Supreme Court of the United States to be holden at Washington, D. C., on the second Monday in October next, pursuant to a writ of error, filed in the clerk's office of the supreme court of the State of Iowa, wherein the Cedar Rapids & Missouri River Railroad Company and the Iowa Railroad Land Company are plaintiffs in error and Benjamin Herring is defendant in error, to show cause, if any there be, why the judgment in said writ of error should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Austin Adams, chief-justice of the supreme
195 court of Iowa, this seventh day of February, 1880.

AUSTIN ADAMS,
Chief Justice of Supreme Court of Iowa.

STATE OF IOWA,
Monond County, ss:

I, James Walker, sheriff of said county, hereby certify and return that the within citation came into my hands for service on the 26th day of Feb'y, 1880, and that on the same day I served the same personally on Monk & Selleck, attorneys of record for the within-named defendant Benjamin Herring, by reading said citation personally to Jno. E. Selleck, a member of said firm and attorney for said def't, and by delivery to him personally a true copy thereof; all done in Monona County, Iowa.

Fees: Service, 50; copy, 20; mile, 10—80.

Dated Onawa, Ia., Feb'y 26, 1880.

JAMES WALKER,
Sheriff Monona Co., Ia.

196 CEDAR RAPIDS & MO. RIVER R. R. Co. and Iowa R. R. Land Co., app'l'ts,
vs.
JOHN T. LAKE, LEWIS IDDINGS, DANIEL T. Cutler, Patrick Dundon, Elijah W. Brook, David Greenstreet, Catherine M. Wooster, & William T. Boyd.

And now, on the 12th day of February, 1880, the plaintiffs file in the office of the clerk of the supreme court their petitions for writ of error, bonds, original writs of error, with orders and approval of the chief-justice, and on the 10' day of March file citations with proofs of service in above-entitled cause, in words and figures as follows, to wit:

Supreme court, State of Iowa.

THE CEDAR RAPIDS & MISSOURI RIVER RAILroad Company and the Iowa Railroad Land Co'y
vs.
JOHN T. LAKE.

To the chief-justice of the supreme court of Iowa:

The petition of the Cedar Rapids and Missouri River Railroad

197 Company and the Iowa Railroad Land Company, plaintiffs above named, respectfully shows that in the judgment and decision of the above-entitled cause by the supreme court of Iowa there was drawn in question the construction of certain statutes of the United States, and the said judgment and decision were against the title, right, and privilege claimed by said petitioners under the same.

Your petitioners therefor' pray your honor to examine the record in said suit herewith presented, and thereupon allow a writ of error in said United States to the supreme court of Iowa, pursuant to the acts of Congress of the United States in such cases made and provided.

JOY & WRIGHT,
E. S. BAILEY,
Att'ys for Petitioner.

The writ of error as within prayed is allowed this seventh day of February, 1880.

AUSTIN ADAMS,
Chief Justice of Supreme Court of Iowa.

198 Supreme court of Iowa.

THE CEDAR RAPIDS & MISSOURI RIVER R. R. Co. and the Iowa R. R. Land Co.
vs.
JOHN T. LAKE.

Know all men by these presents that we, the C. R. & Mo. R. R. R. Co. & the Ia. R. R. Land Co., as principals, and Horace Williams & J. Van Deventer, of Clinton, Iowa, as sureties, & are held & firmly bound unto the said John T. Lake in the sum of one thousand dollars, to be paid to said John T. Lake, his executors and administrators; to which payment well and truly to be made we bind ourselves, and each of us, jointly & severally, and our and each of our successors and assigns, executors, & administrators, firmly by these presents. Sealed with our seals and dated this sixth day of Feb'y, A. D. 1880.

Whereas the above-named Cedar Rapids & Missouri River Railroad Co. & the Iowa R. R. Land Co. have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the supreme court of the State of Iowa:

Now, therefore, the condition of this obligation is such that if
199 the above-named C. R. & Mo. R. R. R. Co. and the Iowa R. R. Land Co. shall prosecute their writ of error to effect, and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be & remain in full force & virtue.

CEDAR RAPIDS & MO. R. R. R. CO.,
By E. S. BAILEY, *Its Att'y.*
IOWA R. R. LAND CO.,
By E. S. BAILEY, *Its Att'y.*
HORACE WILLIAMS. [SEAL.]
J. VAN DEVENTER. [SEAL.]

Signed and sealed in presence of—
A. LIVINGSTON SCHUYLER.

STATE OF IOWA,
Clinton County, ss:

Horace Williams & J. Van Deventer, being each duly sworn, each for himself says that he is a resident of the State and is worth more than one thousand dollars beyond the amount of his debts, & that he has property in the State liable to execution to the amount of thousand dollars and upward.

HORACE WILLIAMS.
J. VAN DEVENTER.

Subscribed and sworn to before me, the undersigned, a notary public in & for Clinton Co., Ia., by the above-named Horace Williams & J. Van Deventer, each for himself.

In witness whereof I have hereunto set my hand & notarial seal this 6th day of February, A. D. 1880.

[SEAL.] C. W. CHASE,
Notary Public.

200 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the supreme court of the State of Iowa, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, between The Cedar Rapids and Missouri River Railroad Company and the Iowa Railroad Land Company, plaintiffs, and John T. Lake, defendant, wherein was drawn in question the construction of certain statutes of the United States, and the said judgment and decision were against the title, right, and privilege claimed by said plaintiffs under the same, a manifest error hath happened to the great damage of the said plaintiffs, as by their said complaint appears, we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the
201 Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceeding aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this the 11th day of February, A. D. 1880.

[SEAL.] EDWARD R. MASON,
Clerk of U. S. C. C., Dist. of Iowa.

(Indorsed:) Supreme Court of the United States. Cedar Rapids and Missouri River Railroad Co. et al. vs. John T. Lake. Writ of error. Filed Feb. 12, '80. E. J. Holmes, clerk sup. court. E. S. Bailey, Clinton, Ia., for pl'ffs.

202 United States of America to John T. Lake, greeting:

You are hereby cited and admonished to appear at the Supreme Court of the United States to be holden at Washington, D. C., on the second Monday in October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Iowa, wherein the Cedar Rapids & Mo. R. R. R. Co. and the Ia. R. R. Land Co. are pl't'ffs in error and John T. Lake is def't in error, to show cause, if any there be, why the judgment in said writ of error should not be corrected & speedy justice should not be done to the parties in that behalf.

Witness the Hon. Austin Adams, chief-justice of the supreme court of Iowa, this seventh day of February, 1880.

AUSTIN ADAMS,
Chief Justice of Supreme Court of Iowa.

STATE OF IOWA,
Monona County, ss:

I hereby certify & return that the within citation came into my hands for service on the 26th day of Feb'y, 1880, and that on the same day I served the same personally on Monk & Selleck, att'ys of record for said def't, John T. Lake, by reading said citation personally to Jno. E. Selleck, a member of said firm & att'y for said def't, and by delivery to him a true copy thereof; all done in Monona County, Iowa.

Dated, Onawa, Iowa, Feb'y 26th, 1880.

Fees: Service, 50c; copy, 20; mile, 10—80.

JAMES WALKER,
Sheriff Monona County, Ia.

203 Supreme court, State of Iowa.

THE CEDAR RAPIDS AND MISSOURI RIVER Railroad Co. and the Iowa Railroad Land Co.
vs.
LEWIS IDDINGS.

To the hon. the chief-justice of the supreme court of Iowa:

The petition of the Cedar Rapids and Missouri River Railroad Company and the Iowa Railroad Land Company, plaintiffs above named, respectfully shows that in the judgment and decision of the above-entitled cause by the supreme court of Iowa there was drawn in question the construction of certain statutes of the United States, and the said judgment and decision were against the title, right, and privilege claimed by said petitioners under the same. Your petitioners therefore pray your honor to examine the record in said suit herewith presented, and thereupon allow a writ of error in said cause from the Supreme Court of the United States to the supreme court of the State of Iowa, pursuant to the acts of Congress of the United States in such cases made and provided.

JOY & WRIGHT &
E. S. BAILEY,
Att'ys for Petitioners.

204 The writ of error as within prayed is allowed this seventh day of February, 1880.

AUSTIN ADAMS,
Chief Justice of the Supreme Court of Iowa.

205 Supreme court of Iowa.

THE CEDAR RAPIDS & MO. R. R. R. CO. AND the Iowa R. R. Land Co.
vs.
LEWIS IDDINGS.

Know all men by these presents that we, the C. R. & Mo. R. R. R. Co. & the Ia. R. R. Land Co., as principals, and Horace Williams & J. Van Deventer, of Clinton, Iowa, as sureties, *and* are held and firmly bound unto Lewis Iddings in the sum of one thousand dollars, to be paid to said Lewis Iddings, his executors & administrators, to which payment well and truly to be made we bind ourselves, and each of us, jointly & severally, and our & each of our successors & assigns, executors & administrators, firmly by these presents. Sealed with our seals and dated this sixth day of Feb'y, A. D. 1880.

Whereas the above-named Cedar Rapids & Mo. R. R. R. Co. and the Ia. R. R. Land Co. have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the supreme court of the State of Iowa:

Now, therefore, the condition of this obligation in such that if the above-named Cedar Rapids & Missouri River Railroad Company and the
206 Iowa Railroad Land Co. shall prosecute their writ of error to effect and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

CEDAR RAPIDS & MO. R. R. R. CO.,
By E. S. BAILEY, *Its Att'y.*
IOWA RAILROAD LAND CO.,
By E. S. BAILEY, *Its Att'y.*
HORACE WILLIAMS.
J. VAN DEVENTER.

Signed & sealed in presence of—
A. LIVINGSTON SCHUYLER.

STATE OF IOWA,
Clinton County, ss:

Horace Williams & J. Van Deventer, being each duly sworn, each for himself says that he is a resident of the State and is worth more than one thousand dollars beyond the amount of his debts, and that he has property in the State liable to execution to the amount of one thousand dollars & upwards.

HORACE WILLIAMS.
J. VAN DEVENTER.

Subscribed in my presence & sworn to before me, the undersigned, a notary public in & for Clinton County, Iowa, by the above-named Horace Williams & J. Van Deventer, each for himself.

In witness whereof I have hereunto set my hand and notarial seal this 6th day of Feb'y, 1880.

[SEAL.]

C. W. CHASE,
Notary Public.

The within bond is approved Feb'y 7, 1880.

AUSTIN ADAMS,
Chief Justice of Sup. C't of Ia.

207 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the supreme court of the State of Iowa, greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said supreme court before you between the Cedar Rapids and Missouri River Railroad Company and the Iowa Railroad Land Company, plaintiffs, and Lewis Iddings, defendant, wherein was drawn in question the construction of certain statutes of the United States, and the said judgment and decision were against the title, right, and privilege claimed by said plaintiffs under the same, a manifest error hath happened to the great damage of the said plaintiffs, as by their said complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceed-
208 ings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceeding aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this the 11th day of February, A. D. 1880.

[SEAL.] EDWARD R. MASON,
Clerk U. S. C. C., Dist. of Iowa.

(Indorsed:) Supreme Court of the United States. Cedar Rapids and Missouri River Railroad Co. et al. vs. Lewis Iddings. Writ of error. Filed Feb. 12, '80. E. J. Holmes, clerk sup. court. E. S. Bailey, Clinton, Ia., pl'ffs.

209 United States of America to Lewis Iddings, greeting:

You are hereby cited & admonished to appear at the Supreme Court of the United States, to be holden at Washington, D. C., on the 2nd Monday in October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Iowa, wherein the C. R. & Mo. R. R. R. Co. & Ia. R. R. Land Co. are plaintiffs in error & Lewis Iddings is def't in error, to show cause, if any there be, why the judgment in said writ of error should not be corrected & speedy justice should not be done to the parties in that behalf.

Witness the Hon. Austin Adams, chief-justice of the supreme court of Iowa, this seventh day of February, 1880.

AUSTIN ADAMS,
Chief Justice Supreme Court of Iowa.

STATE OF IOWA,
Monona Co., ss:

I, James Walker, sh'ff of said co., hereby certify & return that the within citation came into my hands for service on the 26th day of Feb'y, 1880, & that on the same day I served the same personally on Monk & Selleck, att'ys of record for said def't Lewis Iddings, by reading said citation personally to Jno. E. Selleck, a member of said firm & att'y for said def't, & by delivering to him a true copy thereof. All done in Monona Co., Ia.

Dated Onawa, Iowa, Feb'y 26, 1880.

JAMES WALKER,
Sheriff Monona Co., Ia.

Fees: Service, 50c.; copy, 20; mil'e, 10—80.

210 Supreme court of Iowa.

THE CEDAR RAPIDS AND MISSOURI RIVER R. R. Co. and Iowa R. R. Land Co.
vs.
DANIEL T. CUTLER.

To the hon. the chief-justice of the supreme court of Iowa:

The petition of the Cedar Rapids and Missouri River Railroad Company and the Iowa Railroad Land Company, plaintiffs above named, respectfully shows that in the judgment and decision of the above-entitled cause by the supreme court of Iowa there was drawn in question the construction of certain statutes of the United States, and the said judgment and decision were against the title, right, and privilege claimed by said petitioners under the same. Your petitioners therefor' pray your honor to examine the record in said suit, herewith presented, and thereupon allow a writ of error in said cause from the Supreme Court of the United States to the supreme court of Iowa, pursuant to the acts of Congress of the United States in such cases made & provided.

JOY & WRIGHT,
E. S. BAILEY,
Att'ys for Petitioners.

This writ of error as within prayed is allowed this seventh day of Feb'y, 1880.

AUSTIN ADAMS,
Chief Justice of Sup. C't of Iowa.

211 Supreme court of Iowa.

THE CEDAR RAPIDS & MO. RIVER R. R. Co. & Iowa R. R. Land Co.
vs.
DANIEL T. CUTLER.

Know all men by these presents that we, the Cedar Rapids & Mo. R. R. R. & Ia. R. R. Land Co., as principals, and Horace Williams & J. Van Deventer, of Clinton, Iowa, as sureties, *and* are held and firmly bound unto

the said Daniel T. Cutler in the sum of one thousand dollars, to be paid to said Daniel T. Cutler, his executors & administrators, to which payment well and truly to be made we bind ourselves, & each of us, jointly & severally, & our & each of our successors & assigns, executors & administrators, firmly by these presents. Sealed with our seals & dated this sixth day of February, A. D. 1880.

Whereas the above-named C. R. & Mo. River R. R. Co. & Iowa R. R. Land Co. have prosecuted a writ of error to the Supreme Court of the U. S. to reverse the judgment rendered in the above-entitled suit by the supreme court of the State of Iowa:

Now, therefore, the condition of this obligation is such that if the above-named C. R. & Mo. River R. R. Co. & the Ia. R. R. Land Co. shall prosecute their writ of error to effect and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void;
212 otherwise the same shall be and remain in full force and virtue.

CEDAR RAPIDS & MO. R. R. R. CO.,
By E. S. BAILEY, *Its Att'y.*
IOWA RAILROAD LAND CO.,
By E. S. BAILEY, *Its Att'y.*
HORACE WILLIAMS.
J. VAN DEVENTER.

Signed & sealed in presence of—
A. LIVINGSTON SCHUYLER.

STATE OF IOWA,
Clinton County, ss:

Horace Williams & J. Van Deventer, being each duly sworn, each for himself says that he is a resident of the State and is worth more than thousand dollars beyond the amount of his debts, and that he has property in the State liable to execution to the amount of one thousand dollars & upwards.

HORACE WILLIAMS.
J. VAN DEVENTER.

Subscribed in my presence & sworn to before me, the undersigned, a notary public in and for Clinton County, Iowa, by the above-named Horace Williams & J. Van Deventer, each for himself.

In witness whereof I have hereunto set my hand and notarial seal this 6th day of Feb'y, A. D. 1880.

[SEAL.] C. W. CHASE,
Notary Public.

The within bond is approved Feb'y 7th, 1880.

AUSTIN ADAMS,
Chief Justice of Supreme Court of Ia.

213 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the supreme court of the State of Iowa, greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said supreme court before you between

the Cedar Rapids and Missouri River Railroad Company and the Iowa Railroad Land Company, plaintiffs, and Daniel T. Cutler, defendant, wherein was drawn in question the construction of certain statutes of the United States, and the said judgment and decision were against the title, right, and privilege claimed by said plaintiffs under the same, a manifest error hath happened to the great damage of the said plaintiffs, as by their said complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the
214 Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceeding aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this the 11th day of February, A. D. 1880.

[SEAL.] EDWARD R. MASON,
Clerk U. S. C. C., Dist. of Iowa.

(Indorsed:) Supreme Court of the United States. Cedar Rapids and Missouri River Railroad Co. et al. vs. Daniel T. Cutler. Writ of error. Filed Feb. 12, '80. E. J. Holmes, clerk sup. court. E. S. Bailey, Clinton, Ia., for pl'ffs.

215 United States of America to Daniel T. Cutler, greeting:

You are hereby cited and admonished to appear at the Supreme Court of the United States, to be holden at Washington, D. C., on the 2nd Monday in October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Ia., wherein the C. R. & Mo. R. R. R. Co. & the Ia. R. R. Land Co. are pl't'ffs in error & Daniel T. Cutler is def't in error, to show cause, if any there be, why the judgment in said writ of error should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Austin Adams, chief-justice of the supreme court of Iowa, this 7th day of Feb'y, 1880.

AUSTIN ADAMS,
Chief Justice of the Supreme Court of Iowa.

STATE OF IOWA,
Monona Co., ss:

I hereby certify & return that the within citation came into my hands for service on the 26th day of Feb'y, 1880, & that on the same day I served the same personally on Monk & Selleck, att'ys of record for the within-named def't, Daniel T. Cutler, by reading said citation personally to Jno. E. Selleck, a member of said firm & att'y for said def't, & by delivering to him a true copy thereof. All done in Monona County, Iowa.

Dated Onawa, Ia., Feb'y 26, 1880.

JAMES WALKER,
Sheriff Monona Co., Ia.

Fees: Service, 50; copy, 20; mil'e, 10—80.

216 Supreme court State of Iowa.

THE CEDAR RAPIDS AND MISSOURI RIVER RAILroad Company and the Iowa Railroad Land Co.
vs.
PATRICK DUNDON.

To the hon. the chief-justice of the supreme court of Iowa:

The petition of the Cedar Rapids and Missouri River Railroad Company and the Iowa Railroad Land Company, plaintiffs above named, respectfully shows that in the judgment and decision of the above-entitled cause by the supreme court of Iowa there was drawn in question the construction of certain statutes of the United States, and the said judgment and decision were against the title, right, and privileges claimed by said petitioner under the same. Your petitioners therefor' pray your honor to examine the record in said suit, herewith presented, and thereupon allow a writ of error in said cause from the Supreme Court of the United States to the supreme court of Iowa, pursuant to the acts of Congress of the United States in such cases made and provided.

JOY & WRIGHT,
E. S. BAILEY,
Att'ys for Petitioners.

The writ of error as within prayed is allowed this seventh day of February, 1880.

AUSTIN ADAMS,
Chief Justice of Supreme Court of Iowa.

217 Supreme court of Iowa.

THE CEDAR RAPIDS & MO. RIVER R. R. CO. and the Iowa R. R. Land Co.
vs.
PATRICK DUNDON.

Know all men by these presents that we, the C. R. & Mo. R. R. R. Co. and the Ia. R. R. Land Co., as principals, and Horace Williams & J. Van Deventer, of Clinton, Iowa, as sureties, *and* are held and firmly bound unto Patrick Dundon in the sum of one thousand dollars, to be paid to said Patrick Dundon, his executors & administrators, to which payment well & truly to be made we bind ourselves, & each of us, jointly and severally, & our & each of our successors & assigns, executors & administrators, firmly by these presents. Sealed with our seals and dated this 6th day of Feb'y, A. D. 1880.

Whereas the above-named Cedar Rapids & Missouri River Railroad Co. and the Iowa R. R. Land Co. have presented a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the supreme court of the State of Iowa:

Now, therefore, the condition of this obligation is such that if the above-named C. R. & Mo. R. R. R. Co. and the Ia. R. R. Land Co. shall prosecute their writ of error to effect, & answer all damages & costs if they shall

fail to make good their plea, then this obligation shall be void;
218 otherwise the same shall be & remain in full force & virtue.

CEDAR RAPIDS & MISSOURI RIVER R. R. CO.,
By E. S. BAILEY, *Its Att'y.*
IOWA RAILROAD LAND CO.,
By E. S. BAILEY, *Its Att'y.*
HORACE WILLIAMS.
J. VAN DEVENTER.

Signed & sealed in presence of—
A. LIVINGSTON SCHUYLER.

STATE OF IOWA,
Clinton County, ss:

Horace Williams & J. Van Deventer, being each duly sworn, each for himself says that he is a resident of the State & is worth more than one thousand dollars beyond the amount of his debts, and that he has property in the State liable to execution to the amount of one thousand dollars & upwards.

HORACE WILLIAMS.
J. VAN DEVENTER.

Subscribed in my presence & sworn to before me, the undersigned, a notary public in & for Clinton County, Iowa, by the above-named Horace Williams & J. Van Deventer, each for himself.

In witness whereof I have hereunto set my hand & notarial seal this 6th day of February, A. D. 1880.

[SEAL.] C. W. CHASE,
Notary Public.

The within bond is approved February 7th, 1880.

AUSTIN ADAMS,
Chief Justice of Supreme Court of Iowa.

219 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the supreme court of the State of Iowa, greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said supreme court before you between the Cedar Rapids and Missouri River Railroad Company and the Iowa Railroad Land Company, plaintiffs, and Patrick Dundan, defendant, wherein was drawn in question the construction of certain statutes of the United States, and the said judgment and decision were against the title, right, and privilege claimed by said plaintiffs under the same, a manifest error hath happened, to the great damage of the said plaintiffs, as by their said complaint appears: we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the
220 Supreme Court of the United States, together with this writ, so

that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceeding aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 11th day of February, A. D. 1880.

[SEAL.] EDWARD R. MASON,
Clerk U. S. C. C., Dist. of Iowa.

(Indorsed:) Supreme Court of the United States. Cedar Rapids and Missouri River Railroad Co. et al. vs. Patrick Dundan. Writ of error. Filed Feb. 12, '80. E. J. Holmes, clerk sup. court. E. S. Bailey, Clinton, Ia., for pl'ffs.

221 United States of America to Patrick Dundon, greeting:

You are hereby cited & admonished to appear at the Supreme Court of the United States, to be holden at Washington, D. C., on the 2nd Monday in October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Iowa, wherein the Cedar Rapids & Mo. River R. R. Co. & the Iowa R. R. Land Co. are the pl't'ffs in error and Patrick Dundon is def't in error, to show cause, if any there be, why the judgment in said writ of error should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Austin Adams, chief-justice of the supreme court of Iowa, this 7th day of Feb'y, 1880.

AUSTIN ADAMS,
Chief Justice of Supreme Court of Iowa.

STATE OF IOWA,
Monona Co., ss:

I, James Walker, sheriff of said county, hereby certify & return that the within citation came into my hands for service on the 26th day of Feb'y, 1880, & that on the same day I served the same personally on Monk & Selleck, att'ys of record for the within-named def't, Patrick Dundon, by reading said citation personally to John E. Selleck, a member of said firm & att'y for said def't, & by delivering to him a true copy thereof. All done in Monona Co., Ia.

Dated Onawa, Iowa, Feb'y 26, 1880.

Fees: Service, 50; copy, 20; mil'e, 10—80.

JAMES WALKER,
Sheriff Monona Co., Ia.

222 Supreme court, State of Iowa.

THE CEDAR RAPIDS AND MO. RIVER RAILroad Company and the Iowa Railroad Land Company

vs.

ELIJAH W. BROOKS.

To the hon. the chief-justice of the supreme court of Iowa:

The petition of the C. R. & Mo. R. R. R. Co. and the Ia. R. R. Land

Co., pl't'ffs above named, respectfully shows that in the judgment and decision of the above-entitled cause by the supreme court of Iowa there was drawn in question the construction of certain statutes of the United States, and the said judgment and decision were against the title, right, and privileges claimed by the said petitioners under the same. Your petitioner therefor' pray your honor to examine the record in said suit, herewith presented, and thereupon allow a writ of error in said cause from the Supreme Court of the United States to the supreme court of Iowa, pursuant to the acts of Congress of the United States in such cases made and provided.

JOY & WRIGHT,
E. S. BAILEY,
Att'ys for Petitioners.

The writ of error as within prayed is allowed the seventh day of February, 1880.

AUSTIN ADAMS,
Chief Justice of Sup. C't of Iowa.

223 Supreme court of Iowa.

THE CEDAR RAPIDS & MO. R. R. CO. AND the Iowa R. R. Land Co.
vs.
ELIJAH W. BROOKS.

Know all men by these presents that we, the C. R. & Mo. R. R. R. Co. & the Iowa R. R. L. Co., as principals, and Horace Williams and J. Van Deventer, of Clinton, Iowa, as sureties, & are held & firmly bound unto Elijah W. Brooks in the sum of one thousand dollars, to be paid to said Elijah W. Brooks, his executors and administrators, to which payment well and truly to be made we bind ourselves, and each of us, jointly and severally, and our and each of our successors and assigns, executors & administrators, firmly by these presents. Sealed with our seals and dated this 6th day of February, A. D. 1880.

Whereas the above-named Cedar Rapids & Missouri River R. R. Co. and the Iowa Railroad Land Co. have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the supreme court of the State of Ia.:

Now, therefore, the condition of this obligation is such that if the above-named C. R. & Mo. R. R. R. Co. & Ia. R. R. Land Co. shall prosecute their writ of error to effect, and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void;
224 otherwise the same shall be and remain in full force and virtue.

CEDAR RAPIDS & MISSOURI RIVER R. R. CO.,
By E. S. BAILEY, *Its Att'y.*
IOWA RAILROAD LAND CO.,
By E. S. BAILEY, *Its Att'y.*
HORACE WILLIAMS.
J. VAN DEVENTER.

Signed & sealed in presence of—
A. LIVINGSTON SCHUYLER.

STATE OF IOWA,
Clinton County ss:

Horace Williams & J. Van Deventer, being each duly sworn, each for himself says that he is a resident of the State and is worth more than one thousand dollars beyond the amount of his debts, and that he has property in the State liable to execution to the amount of one thousand dollars & upwards.

HORACE WILLIAMS.
J. VAN DEVENTER.

Subscribed in my presence & sworn to before me, the undersigned, a notary public in & for Clinton County, Iowa, by the above-named Horace Williams & J. Van Deventer, each for himself.

In witness whereof I have hereunto set my hand & notarial seal this sixth day of February, A. D. 1880.

[SEAL.] C. W. CHASE,
Notary Public.

The within bond is approved Feb'y 7th, 1880.

AUSTIN ADAMS,
Chief Justice Supreme Court of Iowa.

225 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the supreme court of the State of Iowa, greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said supreme court before you between the Cedar Rapids and Missouri River Railroad Company and the Iowa Railroad Land Company, plaintiffs, and Elijah W. Brooks, defendant, wherein was drawn in question the construction of certain statutes of the United States, and the said judgment and decision were against the title, right, and privilege claimed by said plaintiffs under the same, a manifest error hath happened, to the great damage of the said plaintiffs, as by their said complaint appears: We being willing that error, if any hath been should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and pro-
226 ceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceeding aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this the 11th day of February, A. D. 1880.

[SEAL.] EDWARD R. MASON
Clerk U. S. C. C., Dist. of Iowa.

(Indorsed:) Supreme Court of the United States. Cedar Rapids and Missouri River Railroad Co. et al. vs. Elijah W. Brooks. Writ of error.

Filed February 12, '80. E. J. Holmes, clerk sup. court. E. S. Bailey, Clinton, Ia., for pl'ffs.

227 United States of America to Elijah W. Brooks, greeting:

You are hereby cited & admonished to appear at the Supreme Court of the United States, to be holden at Washington, D. C., on the second Monday in October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Iowa, wherein the C. R. & Mo. River R. R. Co. & the Ia. R. R. Land Co. are pl't'ffs in error & Elijah W. Brooks is def't in error, to show cause, if any there be, why the judgment in said writ of error should not be corrected & speedy justice should not be done to the parties in that behalf. Witness the Hon. Austin Adams, chief-justice of the supreme court of Iowa, this 7th day of Feb'y, 1880.

AUSTIN ADAMS,
Chief Justice Supreme Court of Iowa.

STATE OF IOWA,
Monona Co., ss:

I, James Walker, sheriff of said co., hereby certify & return that the within citation came into my hands for service on the 26th day of Feb'y, 1880, and that on the same day I served the same personally on Monk & Selleck, att'ys of record for the within-named def't, David Greenstreet, by reading said citation personally to Jno. E. Selleck, a member of said firm & att'y for said def't, and by delivering to him a true copy thereof. All done in Onawa, Monona Co., Ia.

Dated Onawa, Iowa, Feb'y 26, 1880.
Service, 50; copy, 20; mil'e, 10—80.

JAMES WALKER,
Sheriff of Monona Co., Ia.

228 Supreme court, State of Iowa.

THE CEDAR RAPIDS & MO. RIVER RAILROAD Co. and the Iowa R. R. Land Co.
vs.
DAVID GREENSTREET.

To the hon. the chief-justice of the supreme court of Iowa:

The petition of the Cedar Rapids and Missouri River Railroad Company and the Iowa R. R. Land Co., pl'ffs above named, respectfully shows that in the judgment and decision of the above-entitled cause by the supreme court of the State of Iowa there was drawn in question the construction of certain statutes of the U. S., and the said judgment and decision was against the title, right, & privilege claimed by said petitioners under the same. Your petitioners therefor' pray your honor to examine the record in said suit, herewith presented, and thereupon allow a writ of error in said cause from the Supreme Court of the U. S. to the supreme court of Iowa, pursuant to the acts of Congress of the United States in such case made and provided.

JOY & WRIGHT,
E. S. BAILEY,
Att'ys for Petitioners.

The writ of error as within prayed is allowed this seventh day of Feb'y, 1880.

AUSTIN ADAMS,
Chief Justice of Sup. C't of Iowa.

229 Supreme court of Iowa.

THE CEDAR RAPIDS & MISSOURI RIVER R. R. Co. and Iowa Railroad Land Co.
vs.
DAVID GREENSTREET.

Know all men by these presents that we, the Cedar Rapids & Mo. R. R. R. Co. and the Ia. R. R. Land Co., as principals, and Horace Williams & J. Van Deventer, of Clinton, Iowa, as sureties, *and* are held and firmly bound unto David Greenstreet in the sum of one thousand dollars, to be paid to said David Greenstreet, his executors & administrators, to which payment well & truly to be made we bind ourselves, and each of us, jointly and severally, and our and each of our successors and assigns, executors & administrators, firmly by these presents. Sealed with our seals and dated this sixth day of February, A. D. 1880.

Whereas the above-named C. R. & Mo. R. R. R. Co. & the Iowa R. R. Land Co. have prosecuted a writ of error to the Supreme Court of the U. S. to reverse the judgment rendered in the above-entitled suit by the supreme court of the State of Iowa:

Now, therefore, the condition of this obligation is such that if the above-named C. R. & Mo. R. R. R. Co. & the Iowa R. R. Land Co. shall prosecute their writ of error to effect, & answer all damages and
230 costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be & remain in full force & virtue.

CEDAR RAPIDS & MO. RIVER R. R. Co.,
By E. S. BAILEY, *Its Att'y.*
IOWA R. R. LAND CO.,
By E. S. BAILEY, *Its Att'y.*
HORACE WILLIAMS.
J. VAN DEVENTER.

Signed & sealed in presence of—
A. LIVINGSTON SCHUYLER.

STATE OF IOWA,
Clinton County, ss:

Horace Williams & J. Van Deventer, being each duly sworn, each for himself says that he is a resident of the State, & is worth more than one thousand dollars beyond the amount of his debts, and that he has property in the State liable to execution to the amount of one thousand dollars & upwards.

HORACE WILLIAMS.
J. VAN DEVENTER.

Subscribed in my presence & sworn to before me, the undersigned, a

notary public in & for Clinton County, Ia., by the above-named Horace Williams & J. Van Deventer, each for himself.

In witness whereof I have hereunto set my hand and notarial seal this sixth day of February, A. D. 1880.

[SEAL.] C. W. CHASE,
Notary Public.

The within bond is approved Feb'y 7, 1880.

AUSTIN ADAMS,
Chief Justice of Supreme Court of Iowa.

231 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the supreme court of the State of Iowa, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, between the Cedar Rapids and Missouri River Railroad Company and the Iowa Railroad Land Company, plaintiffs, and David Greenstreet, defendant, wherein was drawn in question the construction of certain statutes of the United States and the said judgment and decision were against the title, right, and privilege claimed by said plaintiffs under the same, a manifest error hath happened, to the great damage of the said plaintiffs, as by their said complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the

232 Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this the 11th day of February, A. D. 1880.

[SEAL.] EDWARD R. MASON,
Clerk U. S. C. C., Dist. of Iowa.

(Indorsed:) Supreme Court of the United States. Cedar Rapids and Missouri River Railroad Co. et al. vs. David Greenstreet. Writ of error. Filed Feb. 12, '80. E. J. Holmes, clerk sup. court. E. S. Bailey, Clinton, Ia., for pl'ffs.

233 United States of America to David Greenstreet, greeting:

You are hereby cited and admonished to appear at the Supreme Court of the U. S., to be holden in Washington, D. C., on the 2nd Monday in Oct. next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Iowa, wherein the C. R. & Mo. R. R. R. Co. & the Ia. R. R. Land Co. are pl't'ffs in error, and David Greenstreet is

def't in error, to show cause, if any there be, why the judgment in the said writ of error should not be corrected & speedy justice should not be done in that behalf.

Witness the Hon. Austin Adams, chief-justice of supremé court of Iowa, this 7th day of Feb'y, 1880.

AUSTIN ADAMS,
Chief Justice Supreme Court of Iowa.

STATE OF IOWA,
Monona Co., ss:

I, James Walker, sheriff of said co., hereby certify & return that the within citation came into my hands for service on the 26th day of Feb'y, 1880, and that on the same day I served the same personally on Monk & Selleck, att'ys of record for David Greenstreet, the within-named def't, by reading said citation personally to Jno. E. Selleck, a member of said firm, and att'y for said def't, and by delivering to him personally a true copy thereof.

Done in Onawa, Monona Co., Ia.
Dated Onawa, Ia., Feb'y 26, '80.

JAMES WALKER,
Sheriff Monona Co., Ia.

Service, 50; copy, 20; mile., 10—80.

234 Supreme court, State of Ia.

THE CEDAR RAPIDS & MO. R. R. R. CO. & the Iowa R. R. Land Co.
vs.
CATHERINE M. WOOSTER.

To the hon. the chief justice of the supreme court of Ia.:

The petition of the C. R. & Mo. R. R. R. Co. & Ia. R. R. Land Co., plaintiffs above named, respectfully shows that in the judgment & decision of the above-entitled cause by the supreme court of Iowa there was drawn in question the construction of certain statutes of the United States, & the said judgment and decision were against the title, right, & privilege claimed by said petitioners under the same.

Your petitioners therefore pray your honor to examine the record in said suit herewith presented, and thereupon allow a writ of error in said cause from the Supreme Court of the U. S. to the supreme court of Iowa, pursuant to the acts of Congress of the U. S. in such cases made & provided.

JOY & WRIGHT,
E. S. BAILEY,
Att'ys for Petitioners.

The writ of error as within prayed is allowed this seventh day of February, 1880.

AUSTIN ADAMS,
Chief Justice Supreme Court of Iowa.

235 Supreme court of Iowa.

CEDAR RAPIDS & MO. RIVER RAILROAD CO. and the Iowa Railroad Land Co.
vs.
CATHERINE M. WOOSTER.

Know all men by these presents that we, the Cedar Rapids and Missouri River Railroad Co. & Iowa Railroad Land Company, as principals, & Horace Williams & J. Van Deventer, of Clinton, Iowa, as sureties, *and* are held & firmly bound unto the said Catherine M. Wooster in the sum of one thousand dollars, to be paid to said Catherine M. Wooster, her executors and administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our successors and assigns, executors & administrators, firmly by these presents. Sealed with our seals and dated this sixth day of February, A. D. 1880.

Whereas the above-named Cedar Rapids & Missouri River Railroad Company and the Iowa Railroad Land Co. have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the supreme court of the State of Iowa:

Now, therefore, the condition of this obligation is such that if the above-named C. R. & Mo. R. R. R. Co. & the Iowa R. R. Land
236 Co. shall prosecute their writ of error to effect and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be & remain in full force & virtue.

CEDAR RAPIDS & MO. RIVER RAILROAD CO.,
By E. S. BAILEY, *Its Att'y.*
IOWA RAILROAD LAND CO.,
By E. S. BAILEY, *Its Att'y.*
HORACE WILLIAMS.
J. VAN DEVENTER.

Signed & sealed in presence of—
A. LIVINGSTON SCHUYLER.

STATE OF IOWA,
Clinton County, ss:

Horace Williams & J. Van Deventer, being each duly sworn, each for himself says that he is a resident of the State and is worth more than one thousand dollars beyond the amount of his debts, and that he has property in the State liable to execution to the amount of thousand dollars and upwards.

HORACE WILLIAMS.
J. VAN DEVENTER.

Subscribed in my presence & sworn to before me, the undersigned, a notary public in & for Clinton Co., Ia., by the above-named Horace Williams & J. Van Deventer each for himself.

In witness whereof I have hereunto set my hand & notarial seal this 6th day of February, A. D. 1880.

[SEAL.]

C. W. CHASE,
Notary Public.

The within bond is approved, Feb'y 6th, 1880.

AUSTIN ADAMS,
Chief Justice of Sup. Ct. of Ia.

237 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the supreme court of the State of Iowa, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, between the Cedar Rapids and Missouri River Railroad Company and the Iowa Railroad Land Company, plaintiffs, and Catharine M. Wooster, defendant, wherein was drawn in question the construction of certain statutes of the United States, and the said judgment and decision were against the title, right, and privileges claimed by said plaintiffs under the same, a manifest error hath happened to the great damage of the said plaintiffs, as by their said complaint appears: We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning
238 the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this the 11th day of February, A. D. 1880.

[SEAL.]

Clerk U. S. C. C. Dist. of Iowa.

(Indorsed:) Supreme Court of the United States. Cedar Rapids and Missouri River Railroad Co. et al. vs. Catharine M. Wooster. Writ of error. Filed Feb. 12, '80. E. J. Holmes, clerk sup. court. E. S. Bailey, Clinton, Ia., for pl'ffs.

239 United States of America to Catherine M. Wooster, greeting:

You are hereby cited & admonished to appear at the Supreme Court of the U. S., to be holden at Washington, D. C., on the 2nd Monday in Oct. next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Iowa, wherein the Cedar R. & Mo. R. R. R. Co. & the Ia. R. R. Land Co. are pl't'ffs in error, & Catherine M. Wooster is def't in error, to show cause, if any there be, why the judg-

ment in said writ of error should not be corrected & speedy justice should not be done to the parties in that behalf.

Witness the Hon. Austin Adams, chief-justice of the supreme court of Iowa, this 7th day of February, 1880.

AUSTIN ADAMS,
Chief Justice of Supreme Court of Ia.

STATE OF IOWA,
Monona Co., ss:

I, James Walker, sheriff of said county, hereby certify & return that the within citation came into my hands for service on the 26th day of Feb'y, 1880, and that on the same day I served the same personally on Monk & Selleck, att'ys of record for the within-named def't, Catherine M. Wooster, by reading said citation to John E. Selleck, a member of said firm and att'y for said def't, & by delivering to him personally a true copy thereof. All done in Monona Co., Ia.

Dated Onawa, Monona Co., Ia., Feb'y 26, '80.

JAMES WALKER,
Sheriff Monona Co., Ia.

Service, 50; copy, 20; mil'e, 10—80.

240 Supreme court, State of Iowa.

THE CEDAR RAPIDS & MISSOURI RIVER R. R. Co. and the Iowa Railroad Land Co.
vs.
WM. T. BOYD.

To the hon. the chief-justice of the supreme court of Iowa:

The petition of the Cedar Rapids & Mo. R. R. R. Co. & Iowa R. R. Land Co., pl't'ffs above named, respectfully shows that in the judgment and decision of the above-entitled cause by the supreme court of the State of Iowa there was drawn in question the construction of certain statute' of the U. S., and the said judgment and decision was against the title, right, and privileges claimed by said petitioners under the same. Your petitioners thereof pray your honor to examine the record in said suit herewith presented, and thereupon allow a writ of error in said cause from the Supreme Court of the U. S. to the supreme court of Iowa, pursuant to the acts of Congress of the U. S. in such cases made & provided.

JOY & WRIGHT,
E. S. BAILEY,
Att'ys for Petitioners.

The writ of error as within prayed is allowed this seventh day of February, 1880.

AUSTIN ADAMS,
Chief Justice of Sup. Ct. of Iowa.

241 Supreme court of Iowa.

THE CEDAR RAPIDS & MO. RIVER R. R. Co. and the Iowa R. R. Land Co.
vs.
WM. T. BOYD.

Know all men by these presents that we, the C. R. & Mo. R. R. R. Co. & the Ia. R. R. Land Co., as principals, and Horace Williams and J. Van Deventer, of Clinton, Iowa, as sureties, *and* are held and firmly bound unto Wm. T. Boyd in the sum of one thousand dollars, to be paid to said Wm. T. Boyd, his executors, & administrators; to which payment well and truly to be made, we bind ourselves, and each of us, jointly & severally, and our and each of our successors & assigns, executors, & administrators, firmly by these presents. Sealed with our seals and dated this 6th day of Feb'y, A. D. 1880.

Whereas the above-named C. R. & Mo. R. R. R. Co. & the Iowa R. R. Land Co. have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the supreme court of the State of Iowa:

Now, therefore, the condition of this obligation *is* such that if the above named C. R. & Mo. R. R. Co. & the Ia. R. R. Land Co. shall prosecute their writ of error to effect & answer all damages & costs if they
242 shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be & remain in full force & virtue.

CEDAR RAPIDS & MO. R. R. R. Co.,
By E. S. BAILEY, *Its Att'y.*
IOWA R. R. LAND CO.,
By E. S. BAILEY, *Its Att'y.*
HORACE WILLIAMS.
J. VAN DEVENTER.

Signed & sealed in presence of—
A. LIVINGSTON SCHUYLER.

STATE OF IOWA,
Clinton County, ss:

Horace Williams & J. Van Deventer, being each duly sworn, each for himself says that he is a resident of the State, and is worth more than one thousand dollars beyond the amount of his debts, and that he has property in the State liable to execution to the amount of one thousand dollars & upwards.

HORACE WILLIAMS.
J. VAN DEVENTER.

Subscribed in my presence & sworn to before me, the undersigned, a notary public in & for Clinton Co., Ia., by the above-named Horace Williams & J. Van Deventer, each for himself.

In witness whereof I have hereunto set my hand & notarial seal this sixth day of Feb'y, A. D. 1880.

[SEAL.] C. W. CHASE, *Notary Public.*

The within bond is approved Feb'y 7th, 1880.

AUSTIN ADAMS,
Chief Justice of Sup. Ct. of Iowa.

243 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the supreme court of the State of Iowa, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, between The Cedar Rapids and Missouri River Railroad Company and the Iowa Railroad Land Company, plaintiffs, and William T. Boyd, defendant, wherein was drawn in question the construction of certain statutes of the United States, and the said judgment and decision were against the title, right, and privilege claimed by said plaintiffs under the same, a manifest error hath happened, to the great damage of the said plaintiffs, as by their said complaint appears, we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the
244 Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, chief-justice of the Supreme Court of the United States, this the 11th day of February, A. D. 1880.

[SEAL.] EDWARD R. MASON,
Clerk U. S. C. C., Dist. of Iowa.

245 United States of America to Wm. T. Boyd, greeting:

You are hereby cited and admonished to appear at the Supreme Court of the U. S. to be holden at Washington, D. C., on the 2d Monday in Oct. next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Iowa, wherein the Cedar Rapids & Miso. R. R. R. Co. & the I'a R. R. Land Co. are pl't'ffs in error & Wm. T. Boyd is def't in error, to show cause, if any there be, why the judgment in said writ of error should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Austin Adams, chief-justice of the supreme court of Iowa, this 7th day of Feb'y, 1880.

AUSTIN ADAMS,
Chief Justice of the Supreme Court of Iowa.

STATE OF IOWA,
Monona Co., ss:

I, James Walker, sheriff of said co., hereby certify & return that the within citation came into my hands for service on the 26th day of Feb'y,

1880, and that on the same day I served the same personally on Monk & Selleck, att'ys of record for the within-named def't, Wm. T. Boyd, by reading said citation personally to Jno. F. Selleck, a member of said firm & att'y for said def't, & by delivering to him a true copy thereof. All done in Monona Co., I'a.

Dated Onawa, Monona Co., I'a, Feb'y 26, '80.

JAMES WALKER,
Sheriff Monona Co., I'a.

Fees: Service, 50; copy, 20; mile 10—80.

246 I, E. J. Holmes, clerk of the supreme court of Iowa, hereby certify the foregoing to be a true, full, and complete copy of the abstract of record of appellant, additional abstract of appellee, upon which the cause was submitted to the court, record entries, opinion of supreme court, petitions for writs of error, appeal bonds, citations and original writs of error in above-entitled causes, as true, full, and complete as the same appear on file and record in my office.

Witness E. J. Holmes, clerk of the supreme court of Iowa, with the seal of said court hereto attached, at my office at Des Moines, this 28th day of September, A. D. 1880.

[SEAL.]

E. J. HOLMES,
Clerk of Supreme Court of Iowa.

(Indorsement on cover:) No. 142, the Cedar Rapids & Missouri River Railroad Co. and the Iowa Railroad Land Co., plaintiffs in error, vs. Benjamin Herring. No. 143, the Cedar Rapids & Missouri River Railroad Co. and the Iowa Railroad Land Co., pl'ffs in error, vs. John T. Lake. No. 144, the Cedar Rapids & Missouri River Railroad Co. and the Iowa Railroad Land Co., pl'ffs in error, vs. Lewis Iddings. No. 145, the Cedar Rapids & Missouri River Railroad Co. and the Iowa Railroad Land Co., pl'ffs in error, vs. Daniel T. Cutler. No. 146, the Cedar Rapids & Missouri River Railroad Co. and the Iowa Railroad Land Co., pl'ffs in error, vs. Patrick Dundon. No. 147, the Cedar Rapids & Missouri River Railroad Co. and the Iowa Railroad Land Co., pl'ffs in error, vs. Elijah W. Brooks. No. 148, the Cedar Rapids & Missouri River Railroad Co. and the Iowa Railroad Land Co., pl'ffs in error, vs. David Greenstreet. No. 149, the Cedar Rapids & Missouri River Railroad Co. and the Iowa Railroad Land Co., pl'ffs in error, vs. Catharine M. Wooster. No. 150, the Cedar Rapids & Missouri River Railroad Company & the Iowa Railroad Land Co., pl'ffs in error, vs. William T. Boyd. Iowa sup. court. Filed October 16, 1880.